NASD Regulatory & Compliance

ALERT

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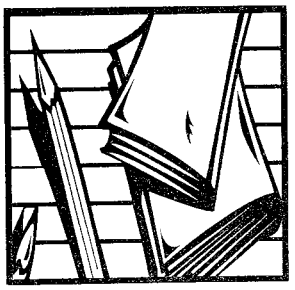

NASD Sets Standards For Ongoing Training

SEC Approves Continuing Education Program For Securities Professionals

The SEC on February 8 approved a formal two-part continuing education program for securities professionals developed by the Securities Industry/Regulatory Council on Continuing Education. Effective July 1, 1995, the new program requires in its Regulatory Element that all registered persons participate in a prescribed computer-based training session on their second, fifth, and tenth registration anniversaries. The other part, the Firm Element, requires firms to keep employees up-to-date on job, product, and service-related subjects through formal, ongoing training programs.

"This initiative will benefit investors by putting into place an innovative and comprehensive program to help securities professionals keep abreast of changes in

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Stronger Safe Harbor Sought

Nasdaq Urges SEC To Make It Easier For Companies To Predict Profits

The Nasdaq Stock Market℠ called on the SEC to strengthen existing rules that protect companies from litigation for their dissemination of financial projections and other "forward-looking" information.

"We believe that the current safe harbor is insufficient," said Joseph R. Hardiman, Nasdaq's President and CEO. "A strengthened safe harbor could serve to reduce the fear of litigation that today is restricting the use of forward-looking information that would otherwise be provided to investors." Hardiman presented Nasdaq's plan to the SEC in a public hearing focusing on litigation reform proposals to revise the safe harbor for forward-looking statements under SEC Rule 175. The rule, enacted in 1979, encouraged issuers and analysts to disseminate accurate information to the public without threat of litigation in case their business projections prove wrong.

While this safe harbor requires that statements be made on a "reasonable and good-faith basis," Hardiman said that the standard applied by the courts of what constitutes "reckless" behavior is not adequate to prevent "abusive, meritless litigation. If the company responds to the legitimate interests of market participants, the company has an excellent chance of an expensive lawsuit alleging violations of the securities laws, whether there is any evidence of misconduct."

Based on Nasdaq's experience, the increase in the potential for litigation has brought a significant change in exposure

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regulations that govern their conduct and the services they sell," said NASD President and Chief Executive Officer Joseph R. Hardiman. "The program is a major industry investment. More than $2 million has been spent in the last 18 months in developing the program, and our member firms will invest millions more each year in its implementation. This level of commitment is unrivaled in the financial services industry."

Regulatory Element

For the Regulatory Element, participants will complete a prescribed interactive training session on securities regulations within 120 days of the second, fifth, and tenth anniversary dates of their original registration. At NASD PROCTOR® Testing Centers, registered persons will experience computer-based training scenarios involving a registered person and a customer, and be asked to choose the most appropriate responses to the story's facts. The program will assess the participant's understanding of the topic and deliver detailed tutorials about the subject if necessary.

"This process assures that participants learn the material before going on to the next section of the training," says James O'Donnell, Executive Vice President, Member Services. Brokers who do not complete the training within prescribed time frames will become inactive and will not be permitted to engage in activities requiring registration.

Firm Element

For the Firm Element, member firms have until January 1, 1996, to implement an in-house training program tailored to their firm's unique structure and needs. Each firm must complete a training needs analysis and develop written training plans for the Firm Element by July 1, 1995.

In the written training plans, firms will clearly identify the training coverage sufficient to meet the criteria established by SRO rules. This includes a specific schedule for delivering training to specified individuals or groups of individuals. For example, it may or may not be necessary to include every "covered person" in the training within each calendar year if a firm can demonstrate a reasonable, well-conceived, and timely executed plan. Firms may need to give priority to those areas of their business where identified needs are greatest, and Firm Element training must be consistent with each firm's unique needs and areas of business.

For more information about the Continuing Education Program, see *Notice to Members 95-13* (March 8, 1995) or call Frank J. McAuliffe, Vice President, NASD Membership, at (301) 590-6694, or Daniel M. Sibears, Director, NASD Regulatory Policy at (202) 728-6911. ❑

(Safe Harbor, continued from page 1)
for companies, their directors, and their management. In view of that, many companies are taking a more defensive and restrictive position, and information relating to company projections is increasingly not being made available to the public, despite the increasing demand for such information.

Hardiman noted that, "with less information, the markets work less efficiently, resulting in both a potential misallocation of, and rise in, the cost of capital." The result is that companies and investors would be penalized.

Nasdaq's goal for a safe harbor is to make as much forward-looking information as possible available to market participants. In order to meet this goal, the litigation risk for disclosure must be at a level low enough to encourage the free flow of information while providing appropriate avenues of redress for parties actually injured by fraudulent information.

Hardiman set out three proposals to strengthen the safe harbor's protections against litigation. They are:

- A stronger standard of what constitutes "recklessness" should be included in the safe-harbor rule. The new standard should require a higher level of wrongdoing than negligence.
- The SEC should require that the company and its management have actual knowledge of misleading statements. Forward statements should be presumed to have been made in good faith, unless there is a clear and specific intent to mislead, or there is actual knowledge of contrary facts, or there exists misleading non-disclosure of known facts by the person making the statement.
- The SEC should broaden safe-harbor protections so that any forward-looking statement would be protected, rather than only those filed with the SEC, as now provided by the rule. ❑

Well-Attended Seminars Focus On Continuing Ed Program

"I left the conference feeling confident I can fulfill all the Program's requirements," said Sandy Martinez, Licensing and Compliance Coordinator at American Funds Distributors, a mutual fund company in Los Angeles, who attended the Securities Industry/ Regulatory Council seminar in San Francisco on March 7 to learn how to implement the Continuing Education Program. More than 1,700 people attended four seminars held in March in San Francisco, Chicago, Atlanta, and New York.

The sessions detailed the Program's Regulatory Element and focused on suggesting how small-to-medium, large, and limited-product firms can approach implementation of the Program's Firm Element. One of the most informative parts, said Martinez, was a demonstration of the Regulatory Element's interactive computer-based training program, which will be given at NASD PROCTOR Centers around the country.

Regulation

FIPS Participants Must Comply With Reporting Requirements

The Market Surveillance Department is closely monitoring compliance with the NASD Fixed Income Pricing System (FIPS℠) reporting and quoting requirements by member firms and their associated persons.

On March 18, 1993, the SEC approved NASD quotation and transaction reporting requirement rules for members trading high-yield, fixed income securities. In April 1994, The Nasdaq Stock Market began operating FIPS for corporate bonds with S&P ratings BB+ or lower. Today, there are 35 bonds designated as FIPS issues that require quotation entry by broker/dealers. Soon, the number of FIPS bonds will increase to 50. In addition, there are 1,260 high-yield bonds in the FIPS data base subject to end-of-the-day trade reporting.

All broker/dealers that enter quotations in FIPS are required to register as participants and comply with these rules and requirements. Participants must:

- Enter quotes for all FIPS issues for which they trade as dealers.
- Enter all quotes received from dealers when acting as a broker's broker.
- Enter quotes that are reasonably related to the prevailing market price, (i.e., prices at which executions occur).
- Report trades for FIPS bonds within five minutes of execution.
- Not engage in unnecessary, deliberate, or deceptive SLD or Form T reporting.

Members are advised that the failure of a FIPS participant, or its associate, to comply with FIPS rules and requirements, or the failure of a member to comply with transaction reporting requirements for high-yield securities, will be considered for disciplinary action by the Market Surveillance Committee.

If you have any questions about FIPS requirements, call Dave Troutner, Market Surveillance, at (301) 590-6473. ❑

Members Must Provide Accurate, Timely Trade Reporting For Nasdaq And OTC Securities

Members are obliged to furnish accurate and timely trade reports for all The Nasdaq Stock Market and over-the-counter (OTC) securities, with transactions reported within 90 seconds after execution. The provisions of NASD Schedule D provide a mechanism for late transaction reporting where unusual circumstances prevent reporting within 90 seconds of execution. However, a pattern or practice of late reporting absent exceptional circumstances is considered inconsistent with high standards of commercial honor and just and equitable principles of trade.

Member-firm trading and compliance personnel must monitor their firm's trade-reporting practices to ensure that they satisfy NASD reporting requirements. Broker/dealers should emphasize strongly to their staffs that the NASD will not condone late-reporting practices for any size trade, including blocks that should be reported in a timely manner during regular market hours, 9:30 a.m. to 4 p.m., Eastern Time.

Members are advised to assess their internal trade-reporting systems and procedures to confirm that they have the capacity to meet current transaction volume. When necessary, members should make manual and system modifications to ensure achievement of NASD trade-reporting obligations. Furthermore, members should ascertain that trading personnel use correctly the override modifier, ".O", in their trade-reporting practices. Internal systems should be designed to detect and curtail excessive use of the .O function.

Additionally, member-firm procedures should include monitoring the proper operation of proprietary systems, including trade-reporting operations by service bureaus, as the NASD requires compliance with its trade-reporting rules by member firms' service bureaus.

Disciplinary Sanctions

All of the NASD District Offices, as well as the Market Surveillance Department inspect member firms for, and monitor compliance with, trade-reporting rules and regulations. Where potential violations are detected, the Market Surveillance Committee conducts a review and may initiate formal disciplinary proceedings where infractions appear to exist. Where violations occur, the Market Surveillance Committee may impose monetary sanctions of $1,000 to $100,000, or more. When circumstances warrant, a member firm and/or its associated persons may receive a censure, fine, suspension, or a bar for trade-reporting misconduct and for failing to adopt and implement adequate supervisory procedures in this area.

Member firms that require assistance in understanding the requirements relating to trade reporting should contact the Market Surveillance Department's Market Services Section at (301) 590-6080. Additionally, members interested in auditing their firm's trade-reporting practices can obtain audit trail information from the NASD Services Operation Section at (202) 728-8039. ❑

Compliance Questions &Answers

The Compliance Department receives many inquiries from members on a variety of topics. To inform members more effectively on matters of common interest, the Compliance Department plans to provide periodically to members, through the *Regulatory & Compliance Alert*, a question-and-answer feature designed to enhance communications with members on important and timely compliance issues. This second installment is on net capital haircuts, deductions, minimum requirements, and deficiency procedures.

Q. Can I use average life or the stated maturity date to determine the required haircut percentage for collateralized mortgage obligations (CMOs)? [The average life is also referred to as the weighted average life (WAL), or the average number of years that each dollar of unpaid mortgage principal due remains outstanding. Average life is computed as the weighted average time to the receipt of all future cash flows, using as the weights the dollar amounts of the principal paydown.]

A. You can use the average life maturity date to determine the required haircut percentage for CMOs because it is a more accurate representation of when the mortgage principal amount will be paid down versus the maturity date of such instrument.

Q. When must a haircut be taken on when-issued or delayed delivery transactions?

A. If the when-issued or delayed delivery transactions settle within 30 days or less, they should be treated as actual positions without any restrictions, and haircut pursuant to the applicable section of SEC Rule 15c3-1(c)(2)(vi). If the transactions settle in more than 30 days, they should be treated as open contractual commitments pursuant to SEC Rule 15c3-1(c)(2)(viii). All when-issued and

delayed delivery transactions should be haircut on a trade-date basis regardless of whether the firm is on a settlement date accounting method.

Q. Is the deduction for securities subject to marketplace blockage taken before or after arriving at tentative net capital?

A. The marketplace blockage deduction is taken before arriving at tentative net capital.

Q. What net capital value can a broker/dealer assign to warrants that are not publicly traded and held in the firm's proprietary trading account?

A. Warrants that are not publicly traded do not meet the definition of "ready market" as defined in SEC Rule 15c3-1(c)(11) and, therefore, should not carry any value for net capital purposes. Ready market includes a recognized established securities market where independent bona fide offers to buy and sell exist.

Q. What is the net capital treatment for payment for order flow fees receivable?

A. Payment for order flow fees receivable are unsecured receivables, and should be treated as nonallowable assets pursuant to SEC Rule 15c3-1(c)(2)(iv), (Assets Not Readily Convertible Into Cash).

Q. The definition of a "dealer" under the minimum net capital requirements includes any broker/dealer that effects more than 10 transactions in any one calendar year for its own investment account. Should corrections, cancellations, and errors be included when determining the 10-trade total?

A. Corrections, cancellations, and errors are generally not included in the 10-trade total. However, on a case-by-case basis, it must be determined whether these errors are isolated instances or a pattern of activity employed by the broker/dealer to circumvent the dealer requirement of the net capital rule.

Q. What information is a broker/dealer required to include on the telegraphic notice sent to the NASD when the firm's net capital declines below the minimum amount required pursuant to SEC Rule 15c3-1? Must the notice also be sent to the SEC?

A. In its notice, a broker/dealer must specify its net capital requirement and current amount of net capital. This requirement became effective with amendments to Rule 17a-11 adopted by the SEC in August 1993. Broker/dealers are obligated to transmit this notice, by telegraph or facsimile, on the day of occurrence or day of discovery of such occurrence. The rule stipulates that this notice must be sent to the SEC, 450 Fifth Street, NW, Washington, DC 20549; the SEC regional office where the broker/dealer has its principal place of business; the broker/dealer's designated examining authority; and the Commodity Futures Trading Commission if the broker/dealer is registered as a futures commission merchant.

Broker/dealers designated to the NASD should send their notices to the NASD Compliance Department, 1735 K Street, Washington, DC 20006-1500, and the appropriate NASD District Office. Note: Broker/dealers are not required to file a FOCUS Report after sending a net capital deficiency notification. ❑

NASD Forms Bank Brokerage Body To Bolster Investor Protection Efforts

A newly formed Bank Broker/Dealer Committee, approved recently by the NASD Board of Governors (Board), will recommend to the NASD Board rules and procedures to govern the securities activities of member firms affiliated with financial institutions, or that provide broker/dealer services and products connected with, or on the premises of, financial institutions.

"The NASD has taken several steps over the past few years to address our concerns about sales practices, supervision, and suitability issues, including the sale of mutual funds to investors, particularly those who are not familiar with the securities markets," said John Pinto, Executive Vice President, Regulation. "The committee will play a key role in our continuing efforts to address the issues raised by investors who buy stocks, bonds, and other investments through an NASD member broker/dealer who conducts its business on the premises of a bank."

Dennis C. Hensley, Managing Director, Assistant General Counsel and Head of Securities Regulatory Compliance, J. P. Morgan & Co., Inc., will chair the committee. Mr. Hensley is also a member of the NASD Board. The other committee members are: Marjorie E. Gross, Chemical Bank; Richard N. Blythe, Huntington Investment Co.; Theodore F. Craver, Jr., First Interstate Bancorp; Allan Croessmann, 1784 Investor Services, Inc.; Brewster Ellis, Financial Institutions Division of Robert Thomas Securities, Inc.; Robert D. Flowers, BA Investment Services, Inc.; William A. Hawkins, Griffin Financial Services; Charles R. King, NationsSecurities; Harold S. Overholt, Dreyfus Investment

Services; William G. Papesh, Composite Group of Funds; and William N. Shiebler, Putnam Mutual Funds Corporation.

The committee will review the comment letters received on NASD-proposed rules to establish uniform and consistent standards to govern broker/dealers operating on the premises of financial institutions.

More than 270 comment letters have been received on the proposal, and will be reviewed by the new committee.

According to Pinto, "The NASD plans to work closely with the four bank regulators—the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve—as well as with various industry groups as we work our way toward developing final rule proposals."

The proposed new rules would require NASD member firms to conduct business in a location distinct from the area where retail deposits are taken; provide customers with a written document outlining differences in insurance coverage and risks for securities and bank deposits; and prohibit member firms from making any payments, including referral fees, to individuals employed with the financial institution who are not registered with the member firm.

The NASD expects to present a final proposal to the Board later this year. Before becoming effective, the rules must be approved by the NASD Board and the SEC. ❑

NASD Develops Preventive Compliance Program

As part of its ongoing preventive compliance program the NASD is developing a multi-faceted member performance support system that includes computer-based training. One aspect of this preventive compliance system will assist members directly in responding to their responsibilities under the Firm Element portion of the new Continuing Education Program. The features of this aspect of the new system include assisting members in conducting a needs assessment, creating customized training plans, providing training materials responsive to the plans, tracking implementation, and developing final reports.

In conducting the needs assessment, members will be able to profile their own firm based on a variety of criteria, such as divisions, departments, associated person registration status, and lines of business and products. The computer-based program then will generate a tentative training plan based on the needs assessment. Given the critical requirement that members develop unique, tailored plans under the Firm Element of the Continuing Education Program, the new system will allow members to meet these responsibilities and customize their training plans. With the training plan in place, the system will enable firms to schedule individuals or groups of individuals into courses reflected in the training plan. Importantly, a tracking feature is built into the automated system that permits firms to capture completion of training programs by each individual.

Using the system, a complete report package may then be compiled and printed. Built-in functionality will allow this report to be transferred to a word processing program for finalization. Importantly, in compiling the final report, the automated program captures the entire progress engaged in by the firm to comply with all or part of the Firm Element.

The NASD plans to address preventive compliance issues and demonstrate its computer-based member support system at its Spring Securities Conference in Orlando, Florida, on May 18, 1995. Call (202) 728-6900 for conference registration information. ❑

Upcoming T+3 Settlement For Municipal Securities Raises Need For Higher Confirm Rate

A critically important element to achieve complete T+3 settlement for municipal securities by June 7, 1995, is the need for a significant improvement by members in the initial comparison rate for interdealer transactions reported to the National Securities Clearing Corporation (NSCC). Currently the comparison rate for such transactions is approximately 79 percent. This rate must improve significantly to ensure that transactions in municipal securities will settle on time in a three-day settlement cycle. Municipal Securities Rulemaking Board (MSRB) Rule G-12 regarding settlement in five days requires 100 percent compliance.

In August 1994, the MSRB filed amendments to its Rule G-12 on Uniform Practice and Rule G-15 on

Confirmation, Clearance, and Settlement of Transactions to require settlement of municipal transactions in three business days. The SEC approved these changes to coincide with the effective date of SEC Rule 15c6-1, which requires T+3 settlement for most corporate securities. (See *Notice to Members 94-18*, March 1994.)

Additionally, the SEC approved amendments to MSRB Rule G-14 and trade data sent to NSCC will be furnished to the public in a pilot program currently underway. For the first time, specific price and volume information will be made available the morning after trade date (T/D); a first step to increasing transparency in the municipal securities market. *The success of this program depends heavily on a significant improvement in reporting trade data to NSCC on a timely basis.*

The NASD has been urging firms to take steps to improve and increase their initial comparison rates. The MSRB board states that nothing less than a 95 percent T/D ratio is acceptable. Firms dealing in municipal securities that do not upgrade their comparison rates to acceptable levels will be subject to potential disciplinary action by NASD District Business Conduct Committees for failing to comply with MSRB rules governing settlement practices and price reporting.

If you have questions about this compliance procedure, contact your CORE examiner in your local NASD District Office. ❑

Advertising

Misuse Of Charts Comparing Index Returns Concerns NASD

Increased use of incomplete index performance charts in sales material on behalf of mutual funds and other investment products is of growing concern to the NASD Advertising Regulation Department. Many of these charts compare the performance of one index or average to another.

For example, a chart may compare the performance of the S&P 500 Index with the Russell 2000 Index or to historic returns on U.S. Treasury bills. These charts have the potential to mislead if an adequate explanation of the performance information is omitted. In other instances, sales material overemphasizes the index performance and either de-emphasizes or omits the actual returns of the offered security.

Explain Relevant Differences

The NASD recognizes that comparisons may be helpful in making an investment decision. Article III, Section 35(d)(2)(M) of the Rules of Fair Practice specifically provides for use of comparisons in members' advertisements and sales literature. However, the rule requires that in order to provide a balanced comparison these charts should be accompanied by a clear explanation of the relevant differences between product types. Such differences may include liquidity, safety, guarantees, insurance, fluctuation of principal and/or return, and tax features. In addition, the purpose of the comparison must be clear.

For example, one of the most commonly used charts compares the historic performance of small company stocks, large company stocks, government bonds, Treasury bills, and CDs. In order to comply with the rule, such charts should be accompanied by the following types of disclosures:

- CDs are insured by the FDIC and offer a fixed rate of return, whereas the return and principal value of an investment in stocks fluctuates with changes in market conditions.
- The prices of small company stocks generally are more volatile than those of large company stocks.
- Government bonds and Treasury bills are guaranteed by the U.S. government and, if held to maturity, offer a fixed rate of return and fixed principal value.

In order to enhance a reader's understanding of the material, the NASD requests that members include this important information in the main body of the presentation, and not in a footnote or legend.

Disclosure Of Basis And Source

The narrative accompanying the charts must identify the indexes, averages, or specific securities (such as three-month Treasury bills) on which the performance is based, and must disclose that past performance does not guarantee future results. Pursuant to Article III, Section 35(d)(1)(A), chart titles also should reflect the historic nature of the performance. The NASD further requires that the charted information be current. Text accompanying the charts must disclose the source of the performance information, as required under Article III, Section 35(d)(2)(K).

Index Performance Alone

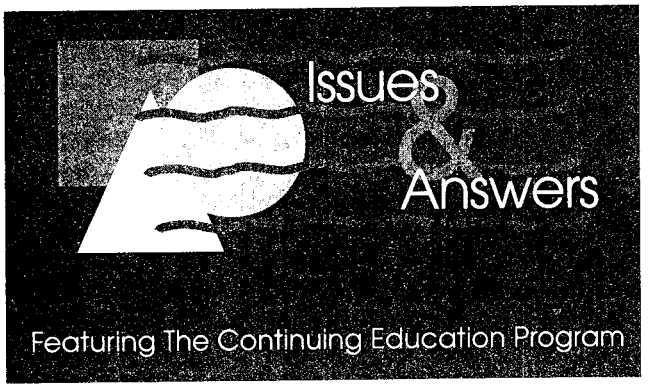
Member firms may include index performance to help the reader understand the long-term performance of a market

sector. However, where a security has an existing performance record, materials could be misleading that overemphasize index performance without a fair discussion of the security. Furthermore, index performance should not be the sole basis for selling a security. Rather, materials must provide a balanced discussion of a security's features, benefits, and risks. A security's current performance generally should be disclosed when index performance is included.

In certain instances, it may be acceptable to use index performance in a sales piece without the performance of the offered security, provided these conditions are met:

- The material includes language that clearly and prominently discloses that the index performance is not illustrative of the security's performance, and offers to provide the security's performance.
- The index performance is not presented in such a way to imply that an investment can be made in the index.
- The sole use of index performance does not mask extremely poor performance by the offered security. If the security is without a track record, this should be disclosed, and the material should include the other relevant disclosures noted above.

Please direct your specific questions about charts to the Advertising Regulation Department, at (202) 728-8330. ❑



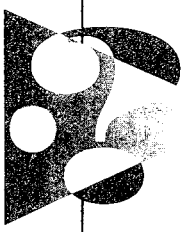
NASD
Spring Securities
Conference

May 17-19, 1995

The Peabody Orlando

The NASD 1995 Spring Securities Conference is your opportunity to get practical advice from industry experts, hear the latest developments in regulatory matters and market trends, and discuss diverse concepts with colleagues from around the country. Every day, securities industry professionals face a multitude of complex issues while they strive to provide investors with better, more efficient service. The 1995 Spring Securities Conference addresses those *issues* and provides the *answers* you will need to stay on top of today's ever-changing financial services environment.

To receive a conference brochure and registration information, please fax your request, including your address or fax number, to (202) 728-8882; or call (202) 728-6900.



"Ask The Analyst"

"Ask the Analyst" provides member firms a forum to pose questions to the NASD Advertising/Investment Companies Regulation Department on a variety of topics. Please note that we cannot guarantee all questions will be answered in this publication. However, we will respond to all questions either here or by contacting you directly. If you have any suggestions or comments, please do not hesitate to contact us. We look forward to hearing from you.

Q. What disclaimers do I need to include in a monthly offering sheet that contains a list of stocks available from my firm?

A. The list of stocks generally would be considered a recommendation and must comply with Article III, Section 35(d)(2)(B) of the NASD Rules of Fair Practice. Although the rule requires no set disclaimer or legend, certain information, such as the latest available price for each stock must be provided in order to make a fair and complete presentation.

In addition, the following relationships must be disclosed, as applicable:

- Your firm acts as a market maker for the recommended securities.
- Your firm or its associated persons buys or sells the recommended securities on a principal basis.
- Your firm or its officers or partners own options, rights, or warrants to purchase any securities issued by the recommended companies.
- Your firm participated as a manager or co-manager of an initial public offering of any of the recommended companies within the last three years.

These disclosures should be specific and clearly applicable to the individual stocks. For example, language such as, "From time to time our firm may act as a market maker in one or more of these stocks" is not acceptable if your firm is currently making a market in any of the stocks. Instead, the material should indicate the stock(s) in which your firm makes a market.

Q. In 1993 the NASD amended the Rules of Fair Practice to prohibit predictions or projections. Does this mean we can no longer include forecasts in research reports?

A. The new rule specifies that predictions or projections of investment results cannot be made in advertisements or sales literature (see Article III, Section 35(d)(2)(N) of the Rules of Fair Practice). That means you may not predict results to the investor. For example, research reports may not include a projected dollar amount of income one could expect from purchasing a stock. Similarly prohibited is a projection of a mutual fund investment's total return over the next two years.

However, this prohibition is not intended to prevent members from providing information to the public regarding the future operations of a specific business. For example, reasonable estimates of a corporation's earnings or fair stock-price targets based on historic trading ranges may be included in research reports, as long as their basis is provided in the material and it is clear that these are forecasts that may not be met (see Article III, Section 35(d)(2)(C) of the Rules of Fair Practice). Although you must avoid excessively long-term or exaggerated forecasts, member firms can continue to offer forecasts regarding an individual company as long as such information is not translated into specific investment benefits to an investor.

Q. We would like to include recommendations of closed-end mutual funds in our list of currently available stocks, but we were concerned that this information would require filing with the NASD. Would you please comment?

A. Advertising and sales literature for closed-end mutual funds trading in the secondary market are not subject to the filing requirements of Article III, Section 35(c)(1) of the Rules of Fair Practice. However, closed-end funds continuously offered by a prospectus are subject to this filing requirement. Specifically, the rule requires all NASD member firms to file their advertising and sales literature on behalf of investment company securities with the NASD Advertising Regulation Department within 10 days of first use. Exemption from this filing requirement does not exempt the material from the content standards of Article III, Section 35(d). In addition, closed-end fund material must be filed in the event of a spot check of a member as discussed in Article III, Section 35(c)(5).

Be aware that the exemption from the filing requirement for closed-end mutual funds trading in the secondary market does not extend to public direct participation programs (DPPs) that traded in the secondary market. According to the NASD Direct Participation Programs Committee, communications for these securities should continue to be filed with the NASD within 10 days of first use.

Q. What are the penalties if a member firm does not file advertising or sales literature with the Advertising Regulation Department within the time periods specified by the Rules of Fair Practice or the Government Securities Rules?

A. The 1993 *NASD Sanction*

"ASK THE ANALYST" (Continued)

Guidelines provides the following suggested sanctions that may result if a member firm files late or fails to file material subject to a filing requirement within a 12-month period:

First late filing.	Warning letter by the staff.
Second late filing.	Letter of Caution.
Third late filing.	Acceptance, Waiver, and Consent (AWC) and $500 fine.
Fourth late filing.	AWC and $1,000 fine.

After the fourth late filing, depending on the circumstances, firms may be liable for fines of $2,500 to $5,000, the suspension of the responsible principal or associated person, or an imposed requirement to pre-file material or other sanction as determined by a District Business Conduct Committee. Importantly, the Guidelines provide flexibility to district committees and, in particularly egregious situations, the sanctions imposed following a finding of misconduct could be substantially greater.

Members should review Article III, Sections 35(c) and 35A(c) of the Rules of Fair Practice, and Section 8(c) of the Government Securities Rules for complete information regarding various filing requirements.

Please send your comments, suggestions, and questions to:

NASD Advertising Regulation Department
1735 K Street, NW
Washington, DC 20006-1500
Attn: "Ask the Analyst"
or call (202) 728-8330.

Rule Interpretations

NASD Evaluates Comments On Proposed Rules Governing Members Operating On Bank Premises

In December 1994 the NASD issued *Notice to Members 94-94* requesting comment on proposed amendments to its Rules of Fair Practice to adopt rules governing broker/dealers that operate on financial institution premises. The comment period expired February 15, 1995, and approximately 280 response letters are being summarized for review and analysis by the Bank Broker/Dealer Committee.

The proposed rules embrace investor protection principles similar to those embodied in the no-action letter from the SEC to the Chubb Securities Corporation, and are substantially consistent with the Interagency Statement on Retail Sales of Non-deposit Investment Products issued by four banking agencies. The letter addresses broker/dealer networking agreements with financial institutions.

The proposed rules are designed to provide NASD members with clear guidance where bank-affiliated and networking broker/dealers operate on financial institution premises. Before becoming effective, the new Bank Broker/Dealer Committee must review the comments, make a recommendation to the NASD Board, and the Board must adopt the rule amendments. The rules would then be filed with the SEC for approval.

For more information on this proposal, see *Regulatory & Compliance Alert,* January 1995, page 10, or contact R. Clark Hooper, Vice President, Advertising/Investment Companies Regulation, at (202) 728-8325; or Daniel M. Sibears and Sarrita Cypress, Regulatory Policy, at (202) 728-6911, or (202) 728-8203. ❑

New Rule Change Would Enhance Detection Of Sales-Practice Abuses By Individuals

The NASD Board of Governors recently approved for filing with the SEC a proposed rule change to require members to report certain material events and written customer complaint data. The rule would provide significant new regulatory intelligence for the NASD to identify more quickly problem members, branch offices, and registered representatives that engage in questionable sales practices. The amendment would be implemented following SEC approval.

Included in the reporting will be data about statutory disqualifications, internal disciplinary actions, and quarterly statistics on customer complaints received by a member firm.

This new initiative will complement action taken by the NASD during the past several years to:

- Increase sanctions for sales-practice violations.
- Emphasize improving the hiring and termination practices at member firms.
- Commit additional resources to sales-practice cases.

The new rule and the prior ongoing initiatives focus on concerns about sales-practice abuses by some registered representatives. In this regard, the rule would help the NASD draw a profile and analyze the activities of persons who pose a potential threat to investors due to, among other things, the existence of sales-practice complaints and internal disciplinary actions. When incorporated with its interim automated systems designed to detect potential problem representatives, the NASD will identify more precisely and expeditiously those registered representatives who pose the most serious regulatory risks.

The NASD's interim automated system draws on the Central Registration Depository (CRD) and other automated data bases that contain, for example, information about examinations, disciplinary actions, customer complaints, and terminations for cause. This will greatly support the NASD examination program in which District Offices identify and conduct intense sales-practice examinations of main and branch offices, including individuals associated with such offices who may pose regulatory concerns because of past misconduct related to abusive sales and trading practices.

For more information on this issue, see *Notice to Members 94-95* (December 1994) and *Regulatory & Compliance Alert*, January 1995, page 12. Questions about this subject may be directed to Daniel M. Sibears, Director, Regulatory Policy, at (202) 728-6911. ❑

NASD Committee Reaffirms 15 Percent Overallotment For Multinational Options

The Corporate Financing Committee (Committee) recently reaffirmed the overallotment provisions of the Corporate Financing Rule for multinational offerings. Section 44 (c)(6)(B)(viii) of the Rule limits underwriters to an overallotment option of not more than 15 percent of the securities offered in a firm-commitment underwriting to avoid distorting the offering size from that originally described to investors.

In addition, the overallotment option hedges the underwriter's inherent risks in a firm-commitment offering and helps achieve an orderly distribution of the underwritten securities. The Committee believes that a 15 percent overallotment option of the securities to be underwritten is sufficient for underwriters to manage their risk during a firm-commitment distribution.

Previously, issuers registered with the SEC the full amount of securities distributed in a multinational offering. Now, issuers register only the portion of the amount of securities for sale in the United States, plus the overallotment shares and enough to cover any flowback to the U.S. market.

For these reasons, the Committee determined that underwriters should be allowed to receive an overallotment option equal to 15 percent of the shares offered in a worldwide distribution, regardless of the number of shares registered with the SEC. ❑

Recommends Changes In Rule To SEC

NASD Encourages Members To Review And Supervise Passive Market-Making Compliance

The NASD Market Surveillance Committee (MSC) recently took disciplinary action against firms failing to comply with SEC Rule 10b-6A (Rule) regarding passive market making. Passive market making is available only for secondary offerings of securities listed on The Nasdaq Stock Market that trade at a price not less than $5 per share with a minimum of 400,000 shares of public float.

Use of passive market making has significantly reduced the trade-to-trade volatility experienced by members when conducting a public distribution of a company's securities. In the past two years, the Rule has been used in more than 200 public offerings. This has cut volatility during the critical two days before pricing from about 45 percent for offerings that don't use the Rule, to 3 percent for those that do.

In reviewing passive market-making abuses brought to its attention, the MSC continues to look closely at firms' compliance and supervisory systems, and will consider their adequacy under the circumstances. The NASD urges all members to review their compliance procedures and to take adequate measures to educate all personnel engaging in passive market making.

Recommended Rule Changes

The NASD recognizes the Rule's complexity and, based on its correspondence with the SEC, recommends that passive market making should be modified to:

(1) Permit the execution of riskless principal and unsolicited purchases (other than through bids disseminated through Nasdaq®) as long as the passive market maker does not thereafter adjust its bids above the prevailing inside independent bid.

(2) Restructure the calculation of the average daily trading volume (ADTV) limitations so that the goal of providing depth and liquidity to the market can be more effectively achieved through broader and more efficient use of the Rule by a larger segment of market makers.

(3) Expand the current interpretation of contemporaneous transactions to permit compliance with its terms if a market maker properly identifies contemporaneous transactions when it trade reports through the Automated Confirmation Transaction Service (ACT℠).

(4) Provide relief from the Rule's strictures when automatic executions cause a passive market maker to be in violation of its purchase limitations.

(5) Expand the availability of the Rule to types of distributions other than firm-commitment, fixed-price offerings. Notwithstanding the complexities of the Rule and the NASD's recommended changes sent to the SEC, the MSC believes that there is need for improved member-firm compliance and supervision.

Typical Trading Problems

The most common trading problems include violations involving purchases by a passive market maker at prices above the highest independent bid and improper passive market-maker bids. The Rule, with certain exceptions, limits purchases to a price no higher than the highest independent bid and restricts passive market-maker bids to a level no higher than the highest independent bid.

Members should take these precautions during the trading day:

(1) When entering quotes on the first day of passive market making, be sure displayed size on the bid side is the lesser of the Small Order Execution System (SOES℠) minimum exposure limit or 30 percent of the member's ADTV net purchase limit.

(2) If a market maker meets or exceeds its 30 percent ADTV net purchase limit, it must, within 90 seconds, withdraw its quotes from the Nasdaq Workstation®, or execute a sale that brings its position under the 30 percent ADTV. **Note:** In both instances, a trader must respond within 90 seconds of the executed trade.

(3) At the open, a market maker may not quote a bid higher than the highest independent bid. Firms should review their bid level prior to the market open to ensure compliance with the Rule.

(4) Do not initiate a bid during trading hours that is above the highest independent bid. When only passive market makers are at the inside bid, do not raise your bid to join other passive market makers at the inside.

(5) Do not purchase stock on a principal basis at a higher price than the highest independent bid, including purchases made through SelectNet℠ and Instinet.

(6) Remember that the price provision of Rule 10b-6A does not apply if your firm buys the stock and reports the transaction on an unsolicited agency basis. You should consult with your compliance department to confirm that the transaction is allowable under Rule 10b-6, paragraph (a)(4)(V)(A). Furthermore, transactions reported and executed on an unsolicited agency basis are not calculated into the firm's net total.

(7) If you are left at the inside bid, with-

out an independent market maker, you may purchase up to five times the SOES mandatory exposure limit at that bid. This is not a net rule, and once you have purchased the maximum allowable, you must drop your bid to a level not higher than the highest independent bid. *This includes all SOES purchases made at this level even if you elected to exclude SOES from the 30 percent ADTV limit.* In addition, the total shares you can buy at this level is always limited by the remaining 30 percent ADTV limit.

Note: If a firm prefers not to use this purchase provision and decides to lower its bid, it must drop that bid to a level not higher than the highest independent bid.

(8) Because members' automatic execution systems can execute trades that are unknown to the trader, firms should disable "preferences" on their internal systems or the Advanced Computerized Execution System (ACES℠). Each firm can disable preferences for individual stocks. Nasdaq Market Operations cannot disable individual stocks, although it can remove a firm from ACES, thus disabling all of the firm's stocks in that system.

Market-Maker Obligations

Member firms' syndicate departments need to be aware of several facets of passive market making that will alter their normal business practices. These relate to a passive market-maker's affirmative obligation to notify the NASD that it will engage in passive market making. Adherence to the notice requirements helps the NASD provide a crucial service to the syndicate community—issuing the *Passive Market Making Eligibility Report.* The NASD Corporate Financing Department sends the syndicate manager this *Eligibility Report* that contains a list of market makers in the security for the two calendar months before the filing date.

The managing underwriter must review the *Passive Market Making Eligibility Report,* indicate who will be making passive markets or withdrawing under SEC Rule 10b-6, add any market makers who are syndicate participants but not on the *Eligibility Report,* and fax it to Nasdaq at (203) 385-6381. Nasdaq then can properly code all distribution participants during that time called the "cooling-off" period.

The syndicate manager must ensure that the underwriting prospectus properly discloses the use of passive market making. Regulation S-K describes these disclosure requirements. Members' syndicate departments need to observe the following procedures when using the Rule:

(1) To use passive market making, notify Nasdaq Market Operations in writing by 12 noon, Eastern Time (ET), on the business day before the cooling-off period begins.

(2) Notification involves returning, by fax, a completed copy of the eligibility report showing which market makers in the syndicate will be participants in passive market making and those excused "out of the box."

(3) Once a secondary offering qualifies for passive market making, a firm must have 30 percent ADTV volume of at least 100 shares.

(4) A market maker that is identified as a member of a distribution, but that does not want to participate as a passive market maker in the distribution, must notify Nasdaq Market Operations by 4 p.m., ET, on the business day before the beginning of the cooling-off period to avoid designation as a passive market maker.

(5) If an underwriting firm wants to initiate a stabilizing bid in a secondary offering, the firm must notify Nasdaq Market Operations in writing initiating the stabilizing bid. Any questions about this should be directed to Nasdaq Market Operations at (203) 375-9609.

(6) Check the Nasdaq Workstation screen for market makers that are not on the eligibility report but are participants in the distribution. List these firms on the eligibility report so that Nasdaq Market Operations can remove their quotes.

The NASD regards SEC Rule 10b-6A violations as serious and will continue to examine closely the adequacy of firms' compliance and supervisory systems to prevent violations. *Notices to Members 93-29* and *93-41* have more information on passive market-making rules. If you have any questions, please call the Corporate Offerings Section, Market Surveillance, at (301) 590-6485 or (301) 590-6823; or fax your inquiries to (301) 590-6911. ❑

Arbitration Looking For 3,100 Arbitrators In 1995-96

An NASD arbitrator recruitment initiative is underway throughout the United States. The goal is to recruit about 3,100 persons with background in such areas as employment law, injunctive relief, and large and complex cases. Suitable candidates must be readily available to serve, knowledgeable in the required areas, and free of actual and perceived bias or conflict.

"We are recruiting several thousand new arbitrators this year and next to meet the growing demand for fully trained and available arbitrators," said Deborah Masucci, Vice President, Arbitration. Between January 1, 1993, when the NASD began requiring arbitrator training, and June 1993, the number of available arbitrators fell from more than 6,800 to about 2,500. Today, there are about 4,500, according to Masucci.

Arbitration is the primary method of dispute resolution in the securities industry. Serving as judges, arbitrators make final and binding decisions according to the Uniform Code of Arbitration regarding disputes between customers and brokerage firms, and between brokerage firms and individuals associated with those firms.

The National Arbitration Committee expects to finalize specific program recruitment issues by April. Part of the NASD plan is to emphasize efforts to diversify its arbitrator pool by seeking more women and minority candidates.

NASD Suspends Falcon Trading, Bars Others

The NASD ordered Falcon Trading Group, Ltd., its trader, principal, and part-owner, Glen T. Vittor, and an associated trader, Philip Gurian, to pay fines totaling $410,000 plus $189,125 in restitution. Falcon also was suspended for 30 business days in all capacities, and Vittor was barred from acting as a principal, suspended for one year from association with any NASD member, and required to requalify as a registered representative. Gurian was barred in all capacities.

Falcon failed to honor two 13,000-share trades in Spectrum Information Technologies, Inc., after the price dropped by about 53 percent on 34.4 million share volume. The NASD found that Falcon, through Vittor, separately bid PaineWebber, Inc., and Lehman Brothers, Inc., for 13,000 shares each of Spectrum at 12 7/8 on May 20, 1993 at 10:11 and 10:13 a.m., respectively. PaineWebber and Lehman agreed to the trades and reported the same to the NASD Automated Confirmation Transaction Service (ACT).

Shortly thereafter, Spectrum's market price declined sharply and closed at 6, down 53 percent. Falcon, through Vittor, deliberately failed to respond to, or confirm, such trades through ACT. In fact, Vittor misled both selling firms, thereby obstructing their follow-up efforts to resolve the trades. The next morning, Vittor subsequently declined both trades through ACT. The NASD found that Vittor engaged in bad-faith conduct to mitigate trading losses, without equitable excuse or justification, in violation of Article III, Section 1 of the NASD Rules of Fair Practice.

In its March 1, 1995, decision, the NASD stated that, "in such cases, we believe that it is necessary to impose a substantial fine over and above the restitution amount in order to remove any incentive to 'ride the market' and discourage individuals who otherwise might believe that the only penalty for refusing to honor trades is a requirement to compensate others for any damages incurred."

"A member's obligation to honor their trading commitments represents the cornerstone of market integrity and any attempt to avoid that obligation must not be tolerated." said John Pinto, Executive Vice President, Regulation.

The NASD issued its decision following an appeal of a Market Surveillance Committee disciplinary action to the NASD National Business Conduct Committee (NBCC). The bars on Vittor and Gurian became effective with the NBCC's decision on March 1, 1995. This disciplinary process represents a final NASD enforcement action. The firm and Vittor have appealed to the SEC, and the SEC has issued an order denying Vittor's request for a stay of the bar in all principal capacities.

NASD Sanctions Lew Lieberbaum & Co., Inc., Others

The NASD has ordered restitution and imposed fines of more than $1 million against Lew Lieberbaum & Co., Inc., Garden City, New York. Also disciplined were Mark I. Lew, Chairman and CEO; Leonard A. Neuhaus, CFO; Sheldon J. Lieberbaum, Director of Corporate Finance; and Michael J. Perdie, a trader.

Pursuant to this action taken by the NASD Market Surveillance Committee, the firm and all of the named individuals neither admitted nor denied the allegations. Sanctions imposed required the firm, Lew, Neuhaus, and Lieberbaum to pay more than $320,000 in restitution to customers who were charged excessive prices due to the manipulation of the market of Kitchen Bazaar, Inc., warrants (KBAZW). Within three days of the decision, the firm and respondents Lew, Neuhaus, and Lieberbaum had to deposit these funds into an interest-bearing escrow account under the control of a law firm acting as escrow agent, to be paid out to customers identified by the NASD as having been harmed by respondents' misconduct. Most of the activity occurred in the firm's Florida branch, and involved customers residing in 14 states including Florida, New York, Colorado, Pennsylvania, and New Jersey.

In addition to the order of restitution, the firm and all of the named individuals were censured and fined an aggregate of $790,000. The NASD also suspended Lew and Neuhaus in all capacities for three months, while Lieberbaum and Perdie were suspended for one month in all capacities.

"I am particularly pleased with the restitution aspects of our enforcement action because it ensures that funds will be set aside and available to pay identified harmed investors the amounts they were overcharged by the fraudulent activity. This is truly a victory for investors," said John E. Pinto, NASD Executive Vice President, Regulation.

The firm, Lew, Neuhaus, Lieberbaum, and Perdie consented to findings of having engaged in conduct that constitutes manipulative, deceptive, or fraudulent behavior in violation of the NASD Rules of Fair Practice and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. The manipulation occurred on August 22 and 23, 1991, and involved the purchase and sale of KBAZW. The firm, Neuhaus, and Perdie further consented to findings that while manipulating the market of KBAZW, they maintained inaccurate books and records by not accurately time-stamping many of the order tickets for purchases and sales of the warrants. The firm and Neuhaus also consented to findings that they failed to establish and enforce written supervisory procedures and failed to supervise the activities of the firm's order room and order room personnel.

Market Manipulation

The firm and the named individuals consented to findings that the firm, while acting as managing underwriter for an offering of Kitchen Bazaar, Inc., units that went effective on August 13, 1991, sold about 86 percent of the offering to its own retail customers. Each unit consisted of 100 shares of preferred stock and 4,000 warrants. On August 21, 1991, the firm exercised its option to break up the units, and also solicited customers to sell their warrants to the firm while paying their brokers a gross commission of almost 50 percent of the sales price. As a result of the solicitation, the firm purchased from customers more than 2.7 million warrants that day at a price of about 6 cents per warrant. Together with an additional 300,000 warrants purchased from other broker/dealers, the firm's proprietary account had accumulated some 3 million warrants by the close of business on August 22, 1991. On August 23, 1991, the firm's brokers solicited other retail customers to buy Kitchen Bazaar warrants. Despite owning approximately 3 million warrants, the firm improperly directed customer purchase orders for 750,000 warrants to three market makers that displayed the best prices for the warrants. This conduct by the firm and the other respondents artificially raised the price of the warrants by causing the market makers to raise quoted prices from 9 cents (3/32) to 12 1/2 cents (1/8) per warrant. Within five minutes, the firm sold approximately 3.2 million warrants at the artificially high price of 13 1/5 cents per warrant in 82 retail transactions. Within minutes after these sales to customers took place, the quoted price dropped and returned to the original price of 9 cents per warrant. As a result of these trades at an artificially inflated price, the firm's customers were overcharged about $218,000. As part of the settlement, these customers will be reimbursed more than $320,000, representing the amount that the customers were overcharged, including prejudgment interest dating back to the violative conduct.

Additional Sanctions

The NASD disciplinary action also calls for the firm to engage in several undertakings. Among others, these include a limitation on the firm's participation in underwritings; annual testing of all registered personnel regarding the firm's compliance procedures; and the separation of function between the trading department and the Chief Compliance Officer. The firm has also agreed to retain an outside consultant, acceptable to the NASD, for two years to review

the firm's compliance policies and recommend appropriate changes. The firm has agreed to implement all recommendations made by the consultant. The firm has also agreed that Neuhaus, who will never be permitted to function in a compliance capacity, may not act in a supervisory capacity in the firm's trading room for two years.

"This enforcement action by the NASD is a further demonstration of the varied scope of our intensified initiatives to address manipulative activity and abusive sales practices in the securities industry," said Pinto. He also praised the cooperative efforts of the NASD Enforcement Department and the Division of Securities and Investor Protection of the State of Florida Department of Banking and Finance, stating that "this was an extensive and comprehensive investigation that demonstrates the effectiveness of the combined efforts of the NASD and the State of Florida."

Comptroller Robert Milligan of Florida said, "It is through cooperative efforts of this type that the consumers of Florida are better protected when investing in the securities markets. We appreciate the ongoing cooperation of the NASD in this matter, as well as others. Working with them allows us to better meet our mandate of protecting the investing public."

Compliance Short Takes

The NASD solicited comments from its members on the National Arbitration Committee's (NAC) recommendation to establish an internal mediation program to resolve securities disputes. The NAC proposed a set of procedures governing mediation proceedings conducted under NASD auspices, and the NASD asked members to comment on the structure and provisions of the proposed program. Comments were due March 1, 1995.

The goal of mediation is to provide public customers, member firms, and associated persons with an additional effective process for resolution of their disputes. Mediation is a non-binding negotiation facilitated by an experienced, neutral third-party and allows parties an opportunity for early dispute resolution. The resulting settlement is likely to save involved parties substantial time and expense.

More information about the NASD Mediation Program and Draft Mediation Procedures appears in *Notice to Members 95-1* (January 1995).

The SEC recently adopted changes to Rule 10b-10, while deferring action on proposed new Rule 15c2-13. The amendments to Rule 10b-10 require the disclosure of additional information on customer confirmations, while the deferred action would have required disclosure of markup/markdown information for riskless principal trades in debt securities. Similarly, the SEC deferred action on proposed Rule 15c2-13 that would require similar disclosure for municipal securities transactions. The amendments became effective April 3, 1995, allowing firms adequate time to adapt their systems to accommodate the new disclosure requirements.

The SEC also is amending Rule 10b-10 to require broker/dealers that do not belong to the Securities Investor Protection Corporation (SIPC) to state affirmatively on customer confirmations that they are not SIPC members. This change, originally set for April 3, was postponed to October 2, 1995.

A copy of the release regarding these amendments appeared in the November 17, 1994, *Federal Register*. More information is available in *Notice to Members 95-2* (January 1995), or call Janet Marsh at (202) 728-8228.

On March 10, the SEC delayed until October 2, 1995, the effectiveness of new Rule 11Ac1-3 and amendments to Rule 10b-10 concerning payment-for-order-flow disclosure requirement practices. The rules were scheduled to be effective April 3, 1995.

Additionally, the SEC deferred consideration of additional amendments to Rules 11Ac1-3 and Rule 10b-10 that were originally proposed on October, 27, 1994. Therefore, until October 2, 1995, the only requirements regarding payment for order flow are in Rule 10b-10.

For additional information on this action, members should refer to the March 10, 1995 order, SEC Release No. 35473, or call Carlene Kim, SEC Senior Counsel, at (202) 942-4180.

On November 30, 1994, the SEC approved an amendment to Section 65 of the Uniform Practice Code relating to customer transfers. The NASD filed the amendments, along with others, to the NASD rules designed to implement the SEC mandate to move to T+3 settlement on securities transfers. The amendments to Section 65 were approved on an accelerated basis to permit the implementa-

tion of changes to the Automated Customer Account Transfer System (ACATS).

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On December 7, 1994, in SEC Release No. 34-35059, File No. SR-NASD-94-15, the SEC approved amendments to the NASD Free-Riding and Withholding Interpretation under Article III, Section 1 of its Rules of Fair Practice. The changes affect:

- Definition of immediate family members, public offerings, and associated persons.
- Use of the "carve out" mechanism for restricted persons in Investment Partnerships and Corporations.
- Stand-by purchase arrangements by restricted persons.
- Issuer-directed securities and other provisions of the Interpretation.

The Interpretation protects the integrity of the public offering system by ensuring that members make a bona fide public distribution of "hot-issue" securities and do not withhold such securities for their own benefit, or use the securities to reward other persons in a position to direct future business to the member. Details on the definition of hot issues, public offerings, prohibitions regarding members retaining such securities in their own accounts and other information are in *Notice to Members 95-7* (February 1995).

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The U.S. Treasury Department recently issued an Advance Notice of Proposed Rulemaking (ANPR) under the Government Securities Act of 1986. Treasury intends to implement rules to require persons holding, maintaining, or controlling large positions in to-be-issued or recently issued Treasury securities to keep records and file reports of these large positions. In its ANPR, Treasury is requesting comment on the structure of these large-position rules. Comments are due on or before April 24, 1995.

NASD members that conduct a government securities business should review Treasury's ANPR, published in the January 24, 1995, Federal Register. Members that choose to comment should do so by April 24, 1995. Send comment letters to Government Securities Regulations Staff, Bureau of the Public Debt, Kenneth R. Papaj, Director; or Donald Hammond, Assistant Director, Department of the Treasury, 999 E Street, NW, Room 515, Washington, DC 20239-0001.

More information on this subject is in *Notice to Members 95-15* (March 1995).

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Effective January 9, 1995, absent an exemption, members must annotate their affirmative determinations regarding stock availability when effecting short sales for their own proprietary accounts or the account of a customer. In making affirmative determinations, members may rely on daily fax sheets and other "blanket" or standing assurances to satisfy the new annotation requirement until August 1, 1995. After August 1, absent further NASD action, members will not be permitted to rely on daily fax sheets. Details on affirmative determination requirements and chronology of any rule change are in *Notice to Members* 94-80 (October 1994). Questions regarding this subject should be directed to NASD Market Surveillance at (301) 590-6080, or Thomas R. Gira, Assistant General Counsel, at (202) 728-8957.

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NASD Disciplinary Actions

In November and December 1994, and January 1995, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result.

District 1—Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii

November Actions

Ronald Avery Armstrong (Registered Representative, Honolulu, Hawaii) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Armstrong failed to respond to NASD requests for information.

Douglas Alfred Mathes (Registered Principal, Sacramento, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mathes failed to respond to NASD requests for information regarding a complaint against him by a public customer.

December Actions

None

January Actions

Robert Meredith Blanchard (Registered Principal, Lantau Island, Hong Kong) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blanchard failed to respond to NASD requests for information concerning an investigation of his termination from a member firm.

Michael Joseph Pierce (Registered Representative, New York, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pierce failed to respond to NASD requests for information regarding allegations made by public customers of unauthorized trading.

Edward Lawrence Ripley (Registered Representative, Ross, California) was fined $10,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Ripley recommended certain securities to a public customer and thereafter effected purchase transactions in the customer's account without the customer's knowledge or consent.

Linda Sue Smith (Associated Person, Del Rey Oaks, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Smith failed and refused to provide the NASD with requested documents.

District 2—Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo) and southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye)

November Actions

Eddie Seung Chun (Registered Representative, Anaheim, California) was fined $120,000 and barred from association with any NASD member in any capacity. In addition, Chun was ordered to reimburse his member firm $448,351.78. The sanctions were based on findings that, without the knowledge and consent of a public customer, Chun submitted a "transfer/rollover of assets to another carrier" form to effect the surrender of the customer's IRA account and the issuance of a $311,275.62 check made payable to a firm under Chun's control. Chun subsequently cashed the check and converted the funds to his own use. In addition, Chun received from a public customer a $50,000 check for investment purposes, cashed the check, purchased a cashier's check made payable to another firm under his control, and converted the funds. Also, at Chun's request, a public customer issued a $37,076.16 check made payable to the same firm under Chun's control for the purchase of an annuity. Chun cashed the check but failed to purchase any annuity and, instead, converted the funds. Furthermore, Chun submitted an "investment-only request for loan" form on behalf of a public customer seeking a loan against the customer's investment account without the customer's knowledge or consent, received a $50,000 check, cashed the check, and converted the proceeds. Chun also failed to respond to NASD requests for information.

Thomas M. Fogle (Registered Representative, Las Vegas, Nevada) was fined $57,500, ordered to reimburse his former member firm $7,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fogle received from a public customer $1,000 for investment purposes; however, he never deposited the funds in the account and, instead, converted the funds for his own use. When the customer confronted Fogle with a statement that did not reflect the deposit, Fogle prepared and delivered to the customer an account statement falsely reflecting that the funds had been deposited in the account. In addition, Fogle caused $6,500 to be withdrawn from the joint bank savings account of public customers without their knowledge or consent by forging withdrawal slips and converting the funds to his own use. Fogle also failed to respond to NASD requests for information.

George H. Gable (Registered Principal, Anaheim, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gable consented to the described sanctions and to the entry of findings that a customer placed three option orders that Gable orally agreed to have executed. However, the NASD found that Gable never executed the orders as promised but confirmed to the customer that the orders were executed. Furthermore, the findings stated that Gable prepared a false ledger reporting cash and margin balances that incorrectly represented that a customer's account had a $675.00 credit balance. The report was falsified to make it appear that a previous error in crediting certain proceeds owed to the customer had been corrected. In fact, NASD determined that the error had not been corrected when the money line report was prepared and, therefore, the customer's account actually had a zero balance. The NASD also determined that Gable prepared a false money line report that incorrectly represented a customer's margin account balance to avoid the necessity of explaining to the customer the reasons for the existence of debit balances in the customer's account.

Horace S. Langhorne (Registered Representative, Alta Loma, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegation, Langhorne consented to the described sanction and to the entry of findings that, on several occasions, he forged customer signatures on applications to reinstate their life insurance policies, and on disbursement request forms to facilitate the payout of proceeds from the customers' existing life insurance policies. As a result of this activity, the NASD found that Langhorne used the proceeds without the customers' knowledge or consent to pay the customers' existing life insurance policies. In addition, the NASD found that Langhorne provided his member firm with incorrect addresses to prevent the customers from receiving billing information from the firm. The NASD determined that by engaging in this misconduct, Langhorne prevented the customers' insurance policies from lapsing and received commissions totaling $1,471.77.

Edward B. Lee (Registered Representative, San Diego, California) was fined $20,748.05, barred from association with any NASD member in any capacity, and required to pay $244.57 in restitution to his former member firm. The sanctions were based on findings that Lee received from a public customer a $3,896.63 insurance policy refund check, failed to deposit the check in the customer account and, instead, deposited the check into his personal bank account and converted the funds. In addition, Lee cashed and converted for his own use a $252.98 insurance refund check made payable to another public customer.

Gregory Edward Norlander (Registered Representative, Camarillo, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Norlander executed numerous unauthorized transactions in customer accounts. He also failed to respond to NASD requests for information.

Eric E. Peterson (Registered Representative, Las Vegas, Nevada) was barred from association with any NASD member in any capacity. The sanction was based on findings that Peterson made false and misleading statements of material fact and used manipulative, deceptive, and other fraudulent devices to induce the purchase and sale of securities. In addition, Peterson made unauthorized trades in customer accounts, guaranteed a customer against losses, and misappropriated and converted $13,000 in customer funds to his own use. In addition, Peterson failed to respond to NASD requests for information by failing to appear at an investigative interview.

Norman Thorn Robertson (Registered Representative, Santa Barbara, California) was fined $20,000, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by examination in any capacity in which he seeks to become associated. The sanctions were based on findings that Robertson caused to be prepared two false documents relating to a customer account. One document referenced an account balance when, in fact, no account existed, and the other document referred to significant securities holdings in the same account when there were no securities in the account.

December Actions

Pilgrim Distributors Corp. (Los Angeles, California), Palomba Charach Weingarten (Registered Principal, Los Angeles, California), and **Robert Alan Grunburg (Registered Principal, Encino, California).** The firm and Weingarten were fined $25,000, jointly and severally. Weingarten was suspended from association with any NASD member in a principal capacity for three months and ordered to requalify by examination as a general securities principal should she seek to become associated in such capacity after her suspension has elapsed. Furthermore, the firm was ordered to file all advertisements and sales literature with the NASD Advertising Department at least 10 days before use by it, any of its affiliates, or any associated person for the firm for two years. Grunburg was fined $5,000, suspended from association with any NASD member as a general securities principal for one month, and required to requalify by examination as a principal before again associating with any NASD member in such capacity.

The NBCC modified the sanctions following appeal of a Los Angeles District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Weingarten, published two newspaper advertisements approved by Grunburg that contained misleading or exaggerated statements concerning the ranking of mutual funds. The firm, acting through Weingarten and Grunburg, also failed to file the advertisements with the NASD within 10 days of the first use of the advertisements as required.

Furthermore, the firm, acting through Grunburg, entered into a special sales concession arrangement (a sales contest) with another member firm related to the sale of mutual funds on an oral basis with no written agreement executed and without proper disclosure of the arrangement in the prospectuses for each fund. Also, in connection with the sales contest, payments were made by a registered representative of Pilgrim directly to participating account executives of the competing member firm, instead of by Pilgrim. Moreover, the firm, acting through Grunburg, failed to establish and maintain adequate written supervisory procedures. Grunburg has appealed this action to the SEC and the sanctions imposed against him are not in effect pending consideration of the appeal.

January Actions

Troy A. Briceno (Registered Representative, Chula Vista, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Briceno consented to the described sanctions and to the entry of findings that he withdrew $11,000 from a public customer's savings account, and deposited the funds into his own bank account without the customer's knowledge or consent by purchasing cashier's checks using a pre-signed withdrawal slip. The NASD determined that Briceno returned $10,000 to the customer two days later by depositing the funds into the customer's checking account, and returned the remaining $1,000 (plus $34.62 in interest) to the customer four months later by depositing the funds into her savings account. The findings also stated that Briceno caused $25,000 to be withdrawn from the same customer's checking account by obtaining a pre-signed personal check from the customer and making it payable to himself. The NASD determined that Briceno returned the $25,000 (plus $209.45 interest) four months later, by depositing the funds into the customer's savings account.

Stylianos C. Elias (Registered Representative, Santa Monica, California) submitted an Offer of Settlement pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Elias consented to the described sanctions and to the entry of findings that while associated with a member firm, he opened four accounts at different branch offices of another broker/dealer without notifying his member firm in writing that he had intended to open these accounts. Furthermore, the NASD determined that Elias failed to notify his member firm in writing of his association with another member firm.

Mark A. Fischer (Registered Representative, Tampa, Florida) was fined $25,050 and suspended from association with any NASD member in any capacity for 30 days. In addition, Fischer must requalify by examination in any capacity that he seeks to be associated. The sanctions were based on findings that Fischer effected unauthorized transactions in customer accounts and failed to respond to NASD requests for information.

Donald Edward Foley (Registered Representative, Manhattan Beach, California) was fined $15,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by examination in any capacity in which he seeks to become associated within 60 days following the conclusion of the suspension. If Foley fails to requalify within the time frame stated above, he will be suspended until he requalifies. The sanctions were based on findings that Foley engaged in a scheme to conceal, each month, the unrealized losses that existed in a firm inventory account, by executing sales of certain warrants before month-end to certain customer accounts and then repurchasing such warrants from these customer accounts after month-end.

Richard Albert Hernandez (Registered Representative, Torrance, California) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hernandez failed to respond to NASD requests for information regarding his termination from a member firm.

Mark A. Kolowich (Associated Person, Palm Desert, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kolowich consented to the described sanctions and to the entry of findings that he submitted to his member firm a

Form U-4 that contained false information regarding his disciplinary history.

Frank A. Latronica, Jr. (Registered Representative, Westminster, California) submitted an Offer of Settlement pursuant to which he was fined $36,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Latronica consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to provide prompt written notification to his member firm before participating in such transactions.

Jann L. Nichols (Registered Representative, Orange, California) submitted an Offer of Settlement pursuant to which she was fined $40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nichols consented to the described sanctions and to the entry of findings that she participated in private securities transactions while failing to provide prompt written notification to her member firm before participating in such transactions.

Michael A. Niebuhr (Registered Representative, La Costa, California) was fined $15,000, which can be offset upon demonstration that he has paid $4,414 in restitution to a customer. Niebuhr was also suspended from association with any NASD member in any capacity for 90 days and thereafter until restitution has been paid in full. The NBCC affirmed the sanctions on review of a Los Angeles DBCC decision. The sanctions were based on findings that Niebuhr violated Section 5 of the Securities Act of 1933 by offering and selling unregistered stock to public customers. In addition, Niebuhr received shares of stock at no cost, purportedly as a bonus, and recommended and sold those shares to a customer without disclosing certain material information to the customer. Specifically, Niebuhr failed to disclose that he was selling his own stock at the same time he was recommending that the customer purchase it, that the shares that would fill the customer's purchase orders were those he owned in his personal account, and that he received those shares at no cost. As a result of these transactions, Niebuhr made a $3,966 profit. Niebuhr has appealed this action to the SEC and the sanctions are not in effect, pending consideration of the appeal.

Sheldon W. Olander, a.k.a, Shelley W. Olander (Associated Person, Van Nuys, California) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. In addition, Olander must pay $3,600 in restitution to a customer. Without admitting or denying the allegations, Olander consented to the described sanctions and to the entry of findings that he solicited a customer to buy shares of stock and received $3,600 from the customer. The NASD determined that Olander did not use the funds to purchase the stock for the customer, but converted the funds for his own use.

Cabin W. Parker (Registered Representative, Newport Beach, California) was fined $31,595.28 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Parker effected unauthorized transactions in a customer's account and failed to respond to NASD requests for information regarding his handling of customer accounts.

Santa Fe Securities Corp. (Rancho Santa Fe, California), Rankled S. Moore (Registered Principal, Rancho Santa Fe, California), and **William J. Zures (Registered Principal, Rancho Santa Fe, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $10,000, jointly and severally. In addition, Moore and Zures were ordered to requalify by examination as general securities principals within 60 days or be suspended from acting as such. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Moore and Zures, participated in two contingent offerings of limited partnership interests and failed promptly to transmit funds received from investors to a separate escrow account. According to the findings, the funds were transmitted directly to bank accounts opened under the limited partnerships' names wherein Moore and/or Zures were signatories and had the power to withdraw funds.

Richard K. Steele, Sr. (Registered Representative, Beverly Hills, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Steele consented to the described sanctions and to the entry of findings that he participated in a private securities transaction while failing to provide prompt written notification to his member firm before participating in such transaction.

Toluca Pacific Securities Corp. (Burbank, California), Peter J. H. Blowitz (Registered Principal, Studio City, California), and **James Everett Brumm (Associated Person, Yountville, California)**. The firm and Blowitz submitted an Offer of Settlement pursuant to which they were fined $25,000, jointly and severally, and Blowitz was suspended from association with any NASD member in any principal capacity for two years. In addition, Blowitz must requalify by examination in any principal capacity in which he seeks to become associated upon completion of his suspension or remain suspended in such capacity until he requalifies. Brumm was fined $10,000 and required to requalify by examination.

The sanctions against Brumm were based on findings that he became and continued to be associated with Toluca Pacific after being statutorily disqualified. Without admitting or denying the allegations, the firm and Blowitz consented to the described sanctions and to the entry of findings that they permitted Brumm, a barred individual, to become and remain associated with the firm. Furthermore, the firm, acting through Blowitz, failed to implement written or unwritten supervisory procedures and to supervise Brumm's activities.

Robert P. Willard (Associated Person, Bloomington, Indiana) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Willard consented to the described sanctions and to the entry of findings that, in an attempt to receive commissions, he forged a customer's signature on a surrender of paid-up additions form, resulting in the cancellation of and the payout of proceeds from an existing term life insurance policy previously purchased by the customer. The NASD found that Willard used the proceeds to purchase a whole life insurance policy for the customer without the customer's knowledge or consent. In addition, the NASD determined that Willard forged another customer's signature on an application for term conversion form resulting in the cancellation of an existing term life insurance policy previously purchased by the customer and the issuance of a new whole life insurance policy to the customer. The findings also stated that Willard forged the same customer's signature on a policy loan agreement for the new whole life insurance policy, that was purchased for the customer without his knowledge or consent.

District 3—Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming

November Actions

Brett L. Bouchy (Registered Principal, Scottsdale, Arizona) and **Richard C. Whelan (Registered Principal, Scottsdale, Arizona)** submitted an Offer of Settlement pursuant to which Bouchy was fined $10,000 and suspended from association with any NASD member in any capacity for 10 business days. Whelan was fined $20,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they participated in private securities transactions without providing prior written notice of such activities to their member firm. The findings also stated that Whelan provided false statements to the NASD in response to NASD requests for information.

Bouchy's and Whelan's suspensions began October 17, 1994, and concluded October 28, 1994.

Randolph Obyrne Coleman (Registered Representative, Bozeman, Montana) was fined $7,650 and required to pay $2,950 in restitution to a member firm. The sanctions were based on findings that Coleman executed unauthorized transactions in the accounts of public customers and exercised discretion in another public customer's account without obtaining prior written discretionary authorization from the customer and without written acceptance of such discretion by his member firm.

Marketing One Securities, Inc., (Portland, Oregon), Sharon Lorraine Pennell (Registered Principal, Portland, Oregon), and **Larry D. Sperling (Registered Representative, Portland, Oregon)** submitted Offers of Settlement pursuant to which the firm was fined $10,000 and had paid substantial restitution to its customers. In addition, the firm and Pennell were fined $10,000, jointly and severally, and Sperling was fined $10,000 and barred from associating with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Sperling engaged in private securities transactions while failing to inform his member firm of such activities. The findings also stated that the firm failed to establish and enforce written or unwritten supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations. The NASD also determined that the firm, acting through Pennell, submitted inaccurate or false and misleading Form U-5 termination notices concerning the actual circumstances that caused Sperling and another individual's termination from the member firm.

Sabrina L. Martinez (Registered Representative, Englewood, Colorado) submitted an Offer of Settlement pursuant to which she was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Martinez consented to the described sanction and to the entry of findings that she failed to disclose on a Uniform Application for Securities Industry Registration (Form U-4) that she was the subject of a pending NASD investigation concerning conduct that occurred while she was associated with a member firm. Martinez's suspension began August 15, 1994.

Roger Kendall Meyer (Registered Representative, Casper, Wyoming) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Meyer consented to the described sanctions and to the entry of findings that he participated in outside business activities and private securities transactions without providing prior written notice of these transactions and activities to his member firm. The findings also stated that Meyer failed to respond to NASD requests for information.

Thomas Brian Moloney (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $23,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Moloney consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors Interpretation with respect to Free-Riding and Withholding, Moloney sold shares of new issues that traded at a premium in the immediate aftermarket to restricted persons.

Princeton American Equities Corp., (Phoenix, Arizona), Cary DePriest (Registered Principal, Phoenix, Arizona), and **Robert E. Holbert (Registered Principal, Phoenix, Arizona)**. The firm was fined $55,000 and expelled from NASD membership. Holbert was fined $55,000 and barred from association with any NASD member in any capacity, and DePriest was fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through DePriest and Holbert, failed to comply with the exemptive provisions of the Securities and Exchange Commission's (SEC's) Customer Protection Rule 15c3-3 in that it failed to clear all transactions with and for customers on a fully disclosed basis with a clearing broker or dealer, failed to transmit promptly all customer funds and securities to the clearing broker or dealer, and failed to otherwise meet the criteria for an exemption from the requirements of the rule. In addition, the firm, acting through DePriest and Holbert, failed to prepare and maintain records that would evidence its compliance with the aforementioned rule requiring a daily determination of the quantity of fully-paid excess margin

securities in the firm's possession and control. The firm, acting through DePriest and Holbert, also failed to maintain a "Special Reserve Bank Account for the Exclusive Benefit of Customers" and to make the computations necessary to determine the amount required to be on deposit in this bank account.

Furthermore, the firm, acting through DePriest and Holbert, failed to comply with the terms of its restriction agreement with the NASD and, the firm, acting through Holbert, failed to respond to NASD requests for information.

James Bradford Read (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $16,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Read consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors Interpretation with respect to Free-Riding and Withholding, Read sold shares of three new issues that traded at a premium in the immediate aftermarket to a restricted account.

Seth R. Roberts (Registered Representative, Highlands Ranch, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roberts consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Weldon Sullivan Carmichael & Company, d/b/a Weldon Sullivan Hudson & Company (Denver, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined $4,000, jointly and severally with an individual, and fined $6,000, jointly and severally with another individual. In addition, the firm was suspended from engaging in underwriting activities for five business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in a securities business while failing to maintain adequate net capital.

December Actions

Kirk L. Ferguson (Registered Principal, Centerville, Utah) was fined $5,000 and required to provide restitution of $56,335 plus interest to customers, each jointly and severally with a former member firm. The NASD has to approve an explanation to the customers of the reason for the restitution and the firm and Ferguson must provide proof to the NASD that they have made such restitution. Ferguson was fined individually an additional $5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by examination as a financial and operations principal and general securities principal before acting in those capacities with any NASD member firm.

The SEC affirmed the sanctions following appeal of an August 1993 NBCC decision. The sanctions were based on findings that the firm, acting through Ferguson, conducted a securities business while failing to maintain its minimum required net capital and effected securities transactions with retail customers in a common stock that included markups ranging from 6 to 39 percent above the firm's contemporaneous costs. Moreover, the firm, acting through Ferguson, engaged in, and induced others to engage in, deceptive and fraudulent devices and contrivances in connection with the aforementioned stock by dominating and controlling the market in the stock such that there was no independent, competitive market in the shares.

Anthony J. Parisi (Registered Representative, Chandler, Arizona) was fined $20,000, required to pay $6,830.38 in restitution to a customer, and suspended from association with any NASD member in any capacity for 90 days. In addition, Parisi was required to requalify by examination as a general securities representative or be prohibited from acting in such a capacity until he requalifies. The sanctions were based on findings that Parisi recommended that a customer sell his shares in one mutual fund and purchase two others with similar investment objectives, purportedly without the need to pay commissions for the purchase. However, after the purchase was made, the customer was charged $6,830.38 in commissions.

Schneider Securities, Inc. (Denver, Colorado) and **Steven Ray Pata (Registered Principal, Littleton, Colorado)** submitted an Offer of Settlement pursuant to which they were fined $10,000, jointly and severally. The firm was fined an additional $5,000, and required to pay $41,897 in restitution to customers and establish enhanced supervisory procedures concerning markups and markdowns. Pata was also required to requalify by examination as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Pata, effected principal transactions in securities with public customers at excessive and unfair prices. In addition, the firm failed to establish and maintain an adequate supervisory system or to enforce its written supervisory procedures concerning markups.

Charles R. Stedman (Registered Representative, Tucson, Arizona) was fined $20,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a January 1994 NBCC decision. The sanctions were based on findings that Stedman failed to provide complete and timely responses to NASD requests for information regarding a customer complaint.

Philip M. Young (Registered Principal, Phoenix, Arizona) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Young participated in private securities transactions without having notified his member firm in writing.

January Actions

Kendall William Cameron (Registered Representative, Bellevue, Washington) was fined $34,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination. The sanctions were based on findings that Cameron effected transactions in customer accounts while exercising discretion granted pursuant to oral authority. Cameron engaged in this activity without having obtained prior written discretionary authorization from the customers for options trading and without written acceptance of such accounts from his member firm. Cameron also recommended option trading to the customers without having a reasonable basis for believing such recommendations were suitable for the customers.

Jon Scott Chaussee (Registered Representative, Beaver Creek, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chaussee consented to the described sanctions and to the entry of findings that he caused at least eight advertisements to be published that contained misleading and exaggerated statements and were not approved by a registered principal before their use. The findings also stated that Chaussee sent at least one letter to an individual on his previous employer's letterhead and sent a letter containing a signature guarantee stamp in direct contravention of that firm's instructions.

In addition, the NASD found that Chaussee caused at least 13 customer checks to be deposited into accounts other than accounts in which the issuers of the checks had a beneficial interest. The findings also stated that Chaussee participated in private securities transactions without providing prior written notice to his member firm and without receiving prior approval from his firm to participate in such activities; and participated in outside business activities without providing notice of such activities to his firm. Moreover, the NASD determined that Chaussee failed to amend his Uniform Application for Securities Industry Registration (Form U-4) to disclose that he was the subject of an investigation by a self-regulatory organization.

First Capital Securities (Provo, Utah) and **Joseph Ollivier (Registered Representative, Provo, Utah)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were required to pay $61,264.55 in restitution to customers. In addition, Ollivier was fined $30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ollivier maintained customer funds in an improper location in that on at least 19 occasions, he withdrew a total of $111,067.29 in customer funds from the firm and deposited the funds into a bank account, over which he was a co-signatory with his son, without the authorization of the customers. The findings also stated that Ollivier participated in private securities transactions, and the firm, acting through Ollivier, effected principal transactions in securities with retail customers at unfair and excessive prices.

In violation of Regulation T of the Federal Reserve Board, the NASD found that the firm, acting through Ollivier, extended credit in a cash account in connection with the purchase of mutual funds by a customer. Moreover, the NASD determined that the firm, acting through Ollivier, disseminated advertising and sales literature that contained exaggerated and unwarranted statements, incomplete and unfair comparisons between mutual funds and other investment vehicles, predictions and projections of investment results, and otherwise failed to conform with the NASD standards with respect to communications with the public.

Curtis W. Haggar (Registered Principal, Grand Junction, Colorado) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and required to requalify by examination before becoming associated with any NASD member in any capacity. Without admitting or denying the allegations, Haggar consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice of such activities to his member firm. The findings also stated that Haggar effected transactions in the accounts of two public customers pursuant to an oral grant of discretion, while failing to obtain prior written discretionary authority from the customers and the acceptance of the account as discretionary by his member firm.

David M. (Registered Representative, Portland, Oregon) was fined $15,000 and suspended from association with any NASD member in any capacity for 30 days. The NBCC modified the sanctions following appeal of a Seattle DBCC decision. The sanctions were based on findings that Hume recommended to public customers the purchase and sale of securities through the use of margin and a dividend recapture strategy without having reasonable grounds for believing that the transactions were suitable for the customers considering their financial situation, investment objectives, and needs.

Roneice A. Seckman (Registered Representative, Littleton, Colorado) was fined $100,000 and barred from association with any NASD member in any capacity. In addition, Seckman must pay $145,305 in restitution as ordered by the State of Colorado, Second Judicial District Court. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Seckman obtained and misused customer funds by forging signatures to applications for loans against the cash value of 13 insurance policies and submitting unauthorized change of address forms reflecting addresses under her control. As a result, Seckman received $132,966 in policy loan checks made payable to the customers, forged their endorsements on the checks, and used the funds for her personal benefit.

Don Spendlove (Registered Representative, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Spendlove consented to the described sanctions and to the entry of findings that he submitted a falsified document in connection with his application for registration with the NASD.

District 4—Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

November Actions

William B. Alpert (Registered Principal, Kansas City, Missouri) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Alpert failed to respond to NASD requests for information concerning his termination from a member firm. In addition, without the knowledge or consent of the estate of a public customer, Alpert submitted a change of address form for the estate's account to his own address. Thereafter, Alpert submitted a request to liquidate mutual fund shares in the account and negotiated a $10,522.62 check made payable to the customer that was sent to Alpert's address without the knowledge or consent of the estate.

John Francis Noonan (Registered Representative, Minneapolis, Minnesota) was fined $5,000, barred from association with any NASD member in any capacity with the right to apply for association with an NASD member after two years, and required to requalify by examination as a general securities representative. The NBCC imposed the sanctions following review of a Kansas City DBCC decision. The sanctions were based on findings that Noonan fabricated documentation for the purpose of an NASD arbitration proceeding.

This action has been appealed to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

December Actions

Protective Group Securities Corporation (Eden Prairie, Minnesota), Richard James Cochrane (Registered Principal, Edina, Minnesota), and **Martin Melvin Fiterman (Registered Principal, Minnetonka, Minnesota)** were fined $17,500, jointly and severally. In addition, Fiterman was fined $5,000. The SEC affirmed the sanctions following appeal of an August 1992 NBCC decision. The sanctions were based on findings that the firm, acting through Cochrane and Fiterman, sold unregistered securities without an applicable exemption from the registration requirements of the Securities Act of 1933. Furthermore, the firm, acting through Cochrane and Fiterman, sold the aforementioned securities to customers at prices that were unfair and unreasonable. In addition, Fiterman executed transactions for the accounts of public customers on a discretionary basis without obtaining written authorization from the customers and written acceptance of the accounts as discretionary by his member firm. Also, in contravention of SEC Rule 10b-10, the firm, acting through another individual, failed to disclose on customer confirmations the amount of compensation it received on riskless principal transactions.

January Actions

Sherwin Presley Brown (Registered Representative, Roseville, Minnesota) submitted an Offer of Settlement pursuant to which he was fined $7,500, suspended from association with any NASD member in any capacity for five business days, and required to pay $5,432 in restitution to public customers. In addition, Brown must reassign 20,000 shares of stock transferred to him back to the issuer. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notification to his member firm.

Stephen Ray Hunt (Registered Representative, Springfield, Missouri) submitted an Offer of Settlement pursuant to which he was fined $5,000, barred from association with any NASD member in any capacity, and must pay $25,500 plus interest in restitution to entitled parties. Without admitting or denying the allegations, Hunt consented to the described sanctions and to the entry of findings that he received from public customers checks totaling $45,500 for the purchase of a securities fund and mutual fund and, instead, endorsed the checks and retained the proceeds. The NASD also found that Hunt sent to the same customers fictitious statements that had been altered to reflect the customers' requested purchases, although no such purchases were made. In addition, the findings stated that Hunt failed to respond to NASD requests for information in a timely fashion.

Kevin Francis LaPlante (Registered Representative, Maple Grove, Minnesota) was fined $7,500, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination in any capacity that he wishes to function. The NBCC imposed the sanctions following review of a Kansas City DBCC decision. The sanctions were based on findings that LaPlante failed to amend his Form U-4 to disclose that he was the subject of a disclosable criminal prosecution. In addition, LaPlante failed to respond to NASD requests for information.

Dennis Lee Moore (Registered Representative, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that he signed a public customer's name to an authorization for change of dealer form without the knowledge or consent of the customer.

Steven Lance Smith (Registered Representative, Prior Lake, Minnesota) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he participated in private securities transactions by selling shares of a common stock to public customers without providing prior written notice to his member firm.

John Paul Sopsic, Jr. (Registered Principal, Apple Valley, Minnesota) submitted an Offer of Settlement pursuant to which he was fined $1,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sopsic consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in a timely manner.

District 5—Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee

November Actions

Richard D. Packard (Registered Representative, Germantown, Tennessee) was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $168,360.40 in restitution to his member firm. The sanctions were based on findings that Packard misappropriated $168,360.40 from the operating account of his member firm. Specifically, in his capacity as supervisor of the reorganization department, Packard caused entries to be made to his personal brokerage account indicating the receipt of fictitious securities, sold the securities, and thus converted the proceeds to his own use and benefit without the knowledge or consent of his member firm. In addition, Packard failed to respond to NASD requests for information.

December Actions

Paul D. Baune (Registered Representative, Huntsville, Alabama) was fined $21,222.76, suspended from association with any NASD member in any capacity for 20 days, and required to requalify as a general securities representative. The sanctions were based on findings that Baune executed in the accounts of public customers purchase transactions that were unsuitable because the undue concentration of investments in limited partnerships did not meet the customers' objectives, financial situations, and needs.

Robert H. Byars (Registered Principal, Jacksonville, Florida) submitted an Offer of Settlement pursuant to which he was fined $125,000, barred from association with any NASD member in any capacity, and required to pay $31,200 in restitution to his former member firm. Without admitting or denying the allegations, Byars consented to the described sanctions and to the entry of findings that he received from a public customer a $31,200 check for investing in securities but failed to execute the purchase. Instead, the findings stated that Byars cashed the check and converted the funds to his own use and benefit without the customer's knowledge or consent. In addition, the NASD found that Byars failed to respond to NASD requests for information.

Norman C. Jackson (Associated Person, Broken Arrow, Oklahoma) was fined $28,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jackson received from insurance customers $1,362 in cash and checks as payment of insurance premiums. Jackson failed to submit the funds to his member firm and, instead, converted the funds to his own use and benefit without the customers' knowledge or consent. In addition, Jackson pledged two laptop computers belonging to his member firm as security for a loan he received without the firm's knowledge or consent, and failed to respond to NASD requests for information.

Judy L. Marino (Registered Representative, Morgan City, Louisiana) submitted an Offer of Settlement pursuant to which she was fined $30,000, barred from association with any NASD member in any capacity, and required to pay $2,000 in restitution to her former member firm. Without admitting or denying the allegations, Marino consented to the described sanctions and to the entry of findings that she received from a public customer a $2,000 check for investment purposes but failed to invest the funds. Instead, the findings stated the Marino endorsed the check and deposited the funds in her personal bank account, thereby converting the funds to her own use and benefit, without the knowledge or consent of the customer. In addition, the NASD found that Marino failed to respond to NASD requests for information.

January Actions

Carol Ann Rhoads (Registered Principal, Little Rock, Arkansas) submitted an Offer of Settlement pursuant to which she was fined $2,734 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Rhoads consented to the described sanctions and to the entry of findings that she participated in and received compensation for the sale of a zero coupon certificate of deposit without providing prior written notice to her member firm.

District 6—Texas

November Actions

Darrell Gilbert Ayres (Registered Representative, Austin, Texas) was barred from association with any NASD member in any capacity. The National Business Conduct Committee (NBCC) imposed the sanction following review of a Dallas District Business Conduct Committee (DBCC) decision. The sanction was based on findings that Ayres made improper use of customers' funds totaling $26,443 that he obtained under the false pretext that such funds were to be invested in tax sheltered investments through his member firm when, in reality, he converted such funds to his own use and benefit.

Ronald Stephen Combs (Registered Principal, El Paso, Texas) and **Leah A. Combs (Associated Person, El Paso, Texas)**. R. Combs was fined $655,500 and barred from association with any NASD member in any capacity. L. Combs was fined $65,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, while acting on behalf of a former member firm, R. Combs effected transactions in, and induced the purchase of, securities by means of manipulative, deceptive, and fraudulent devices or contrivances. Specifically, R. Combs made improper use of the funds of public customers by misrepresenting to them that their funds had been invested when, in reality, such funds had been converted to the use and benefit of the firm. Furthermore, R. Combs continued his association with his member firm after he was convicted of a felony without first obtaining NASD approval.

In addition, L. Combs functioned as financial and operations principal (FINOP) for the same former member firm without having qualified by examination to function in such capacity. Also, the firm, acting through R. Combs, failed to maintain a blanket fidelity bond. Moreover, the firm, acting through R. Combs and L. Combs, conducted a securities business while failing to maintain its required minimum net capital and while failing to make and keep current its books and records. Furthermore, the firm, acting

through R. Combs and L. Combs, took possession of customers' funds and securities while purporting to operate under exemptive provisions of SEC Rule 15c3-3.

William Kirk Smith (Registered Representative, Anniston, Alabama) was fined $43,202, barred from association with any NASD member in any capacity, and ordered to pay restitution to his member firm. The sanctions were based on findings that Smith engaged in a fraudulent scheme by issuing an $8,640.42 check from the account of a public customer without the customer's knowledge, consent, or authorization. Furthermore, Smith deposited the check in an account he controlled and personally used and converted the funds to his own use and benefit.

December Actions

Silvio Canto, Jr. (Registered Representative, Carrollton, Texas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $105,000, barred from association with any NASD member in any capacity, and required to pay $30,000 in restitution to his former member firm. Without admitting or denying the allegations, Canto consented to the described sanctions and to the entry of findings that he made improper use of customer funds. Specifically, the NASD found that Canto requested a $30,000 loan against a public customer's insurance policy without the customer's authorization, forged the customer's name on the loan check, and deposited the funds into his bank account.

Henry Edward Vail (Registered Representative, Houston, Texas) was fined $20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Dallas DBCC decision. The sanctions were based on findings that Vail made improper use of funds of a local political club by converting $11,000 to his own use and benefit.

Vail appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

January Actions

Chelsea Street Securities, Inc. (Irving, Texas), Gary Steven Williky (Registered Principal, Colleyville, Texas), and **Peter Anthony Stoll (Registered Principal, Irving, Texas)** submitted an Offer of Settlement pursuant to which they were fined $25,000, jointly and severally. In addition, the firm was expelled from NASD membership, Williky was barred from association with any NASD member in any capacity, and Stoll was suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Williky and Stoll, failed to buy securities from and/or sell securities to public customers at prices that were fair.

The NASD also found that the firm, acting through Williky and Stoll, used instrumentalities of interstate commerce to effect transactions in nonexempt securities while failing to maintain its required minimum net capital. Furthermore, the findings stated that the firm, acting through Williky and Stoll, failed to respond to an NASD request for information and failed to file a report of the annual certified audit within the time required. In addition, the NASD determined that the firm, acting through Williky and Stoll, failed to give telegraphic notice of the firm's net capital deficiency and failed to comply with its restriction agreement with the NASD.

Samuel Dwight Dean (Registered Representative, Lewisville, Texas) was suspended from association with any NASD member in any capacity for 30 days and required to requalify by examination in any capacity. The sanctions were based on findings that Dean participated in private securities transactions involving offers and sales of a common and preferred stock and received compensation in connection therewith without providing written notice to or receiving approval from his member firm.

Marc David Lieber (Registered Representative, Dallas, Texas) was fined $10,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to disgorge $13,268. The sanctions were based on findings that Lieber effected unauthorized and excessive transactions in the accounts of a public customer. The NASD found that Lieber engaged in this activity without having reasonable grounds for believing that such transactions were suitable for the customer upon the basis of facts, if any, disclosed as to her other security holdings, financial situation, and needs.

District 7—Florida, Georgia, North Carolina, South Carolina, Puerto Rico and the Canal Zone, and the Virgin Islands

November Actions

Michael S. Arbour (Registered Representative, Port St. Lucie, Florida) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Arbour effected or caused to be effected the purchase of shares of a preferred stock for the securities account of a public customer without the customer's knowledge or consent. In addition, Arbour failed to follow the same customer's instruction to sell any position in the customer's securities account that declined in value by 10 percent. Arbour also failed to respond to an NASD request for information.

Douglas W. Ausenbaugh (Registered Representative, Miami, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000. Without admitting or denying the allegations, Ausenbaugh consented to the described sanction and to the entry of findings that he exercised discretion in the accounts of public customers without obtaining prior written discretionary authority from the customers.

Jose Rafael Benitez (Registered Principal, Miramar, Puerto Rico) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, Benitez consented to the described sanction and to the entry of findings that a member firm, acting through Benitez, conducted a securities business while failing to maintain its required minimum net capital. The NASD also found that the firm, acting through Benitez, failed to maintain and keep current and accurate its books and records and filed materially inaccurate FOCUS Parts I and II reports. In addition, the findings stated that the firm, acting through Benitez, failed to file its annual audited financial report in a timely manner and failed to establish and maintain written supervisory procedures.

Paul Walton Currie (Registered Representative, Atlanta, Georgia) was fined $50,000, barred from association with any NASD member in any capacity, and required to pay $11,629.54 plus interest in restitution to a public customer and $31,000 plus interest in restitution to his member firm. The sanctions were based on findings that Currie engaged in a course of speculative and excessive trading activity involving 21 purchases and sales of securities in the account of a public customer without having a reasonable basis for believing that such trading was suitable for the customer based on the customer's financial situation and needs. Currie also effected or caused to be effected unauthorized transactions in the accounts of four public customers. In addition, Currie failed to respond to NASD requests for information.

David G. Deacon (Registered Representative, Boynton Beach, Florida) submitted an Offer of Settlement pursuant to which he was fined $5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Deacon consented to the described sanctions and to the entry of findings that he opened two securities accounts with his member firm and failed to disclose that the accounts were controlled by a former employee of the firm. Deacon's suspension began December 7, 1994.

David P. Elliott (Registered Representative, Venice, Florida) was fined $50,000, barred from association with any NASD member in any capacity, and required to pay $90,602.19 in restitution to his member firm. The sanctions were based on findings that Elliott engaged in private securities transactions without providing written notice to or obtaining approval from his member firm. In addition, Elliott failed to respond to an NASD request for information.

Robert C. Goodwin (Registered Principal, Sherwood, Arkansas) submitted an Offer of Settlement pursuant to which he was fined $10,000, suspended from association with any NASD member as FINOP for one year, and required to requalify by examination as a FINOP before again acting in that capacity with any NASD member. Without admitting or denying the allegations, Goodwin consented to the described sanctions and to the entry of findings that he performed the functions of a FINOP without proper registration. In addition, the NASD determined that a member firm, acting through Goodwin, conducted a securities business while failing to maintain its required minimum net capital and filed inaccurate FOCUS Parts I and IIA reports.

The findings also stated that the firm, acting through Goodwin, failed to maintain complete, accurate, and current books and records, and as required by Exchange Act Rule 17a-11, failed to file monthly financial reports with the NASD concerning its net capital deficiency. Moreover, the NASD found that the firm, acting through Goodwin, failed to give telegraphic notice and report its failure to make and keep current books and records.

Frederick S. Hunt (Registered Representative, Lake Hamilton, Arkansas) and **Peggy B. Hunt (Registered Representative, Lake Hamilton, Arkansas)** submitted an Offer of Settlement pursuant to which F. Hunt was fined $25,000 and barred from association with any NASD member in any capacity. P. Hunt was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that F. Hunt solicited and effected securities transactions with 10 public customers without being registered with the NASD as a representative. The NASD also found that to execute the aforementioned transactions, P. Hunt signed the account documents for the 10 public customers and received commission payments even though she did not effect the transactions or have any contact with the public customers.

Carter Allen Jones, Jr. (Registered Representative, Ft. Lauderdale, Florida) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jones failed to respond to NASD requests for information concerning customer complaints.

Scott Alan Kann (Registered Representative, Delray Beach, Florida) was fined $25,000, barred from association with any NASD member in any capacity, and ordered to pay $381 plus interest in restitution to his member firm. The sanctions were based on findings that Kann purchased and sold shares of common stock in his personal securities account without paying for the purchase. Kann also falsely represented to an issuer of publicly traded securities that he was authorized to represent his member firm in discussions concerning his member firm committing to becoming a market maker in the issuer's common stock. In addition, Kann failed to respond to NASD requests for information.

Kashner Davidson Securities Corporation (Sarasota, Florida) and **Victor L. Kashner (Registered Principal, Sarasota, Florida)** submitted an Offer of Settlement pursuant to which they were fined $15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that, in contravention of the Board of Governors Free-Riding and Withholding Interpretation, the firm, acting through Kashner, sold shares of two new issues that traded at premium in the immediate aftermarket to investment partnerships without inquiring into the beneficial ownership of the partnerships. The findings also stated that the firm, acting through Kashner, submitted a Free-Riding and Withholding Questionnaire to the NASD that falsely indicated that it had not sold any shares of a new issue to an investment partnership. In addition, the NASD found that the firm, acting through Kashner, failed to establish and maintain adequate written supervisory procedures concerning free-riding and withholding.

Paul F. Lovito, Jr. (Registered Principal, Margate, Florida) submitted an Offer of Settlement pursuant to which he was fined $5,000, barred from association with any NASD member as a FINOP with the right to reapply for such registration after two years, and required to requalify by examination as a FINOP. Without admitting or denying the allegations, Lovito consented to the described sanctions and to the entry of findings that during

the course of a qualification examination, he had in his possession notes relating to the subject matter of the examination and reviewed such notes during the course of the examination.

Jack William Maddock (Registered Representative, Tamarac, Florida) was fined $45,000, barred from association with any NASD member in any capacity, and required to pay $43,184.92 in restitution to a public customer. The sanctions were based on findings that Maddock made recommendations to a public customer without having reasonable grounds for believing that such transactions were suitable for the customer based on facts disclosed by the customer as to the customer's tax status, investment objective, and financial situation and needs. In addition, Maddock failed to respond to an NASD request for information.

Lawrence J. McKenney (Registered Representative, Apopka, Florida) was fined $15,000, suspended from association with any NASD member in any capacity for 30 days, required to requalify by examination as a general securities representative, and ordered to disgorge $12,500 to the NASD. The sanctions were based on findings that McKenney made recommendations to a public customer without having reasonable grounds for believing that such transactions were suitable for the customer based on the customer's tax status, investment objective, and financial situation and needs.

Edward L. Moseley (Registered Representative, Atlanta, Georgia) submitted an Offer of Settlement pursuant to which he was fined $2,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Moseley consented to the described sanctions and to the entry of findings that he solicited 11 investors who purchased units of a private placement outside the scope of his association with his member firm without receiving written approval from the firm. In addition, Moseley served as vice president, secretary, and director of a company for which he was to receive compensation but failed to provide prompt written notification of such employment to his member firm. Moseley's suspension began December 19, 1994.

Robert Bruce Orkin (Registered Principal, Boca Raton, Florida) was fined $15,000 and suspended from association with any NASD member in any principal capacity for 90 days. The United States Court of Appeals for the Eleventh Circuit denied Orkin's petition for review and affirmed the sanctions imposed in an SEC decision. The sanctions were based on findings that a member firm, acting through Orkin, effected, as principal for its own account, over-the-counter sales of corporate securities to public customers at unfair prices. The markups on these transactions ranged from 16.67 to 100 percent over the prevailing market price, in violation of the NASD Mark-Up Policy.

G. Allen Paeth (Registered Representative, Cocoa, Florida) was fined $120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Paeth received from eight public customers checks totaling $38,500 intended to be applied as payments to their annuities. Instead, Paeth converted the proceeds for his own use and benefit without the customers' knowledge or authorization. In addition, Paeth failed to respond to an NASD request for information.

Gary B. Scher (Registered Representative, Ft. Lauderdale, Florida) was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $36,601.91 plus interest in restitution to his member firm. The sanctions were based on findings that Scher withdrew from the securities accounts of public customers checks totaling $49,644 without their knowledge or authorization and converted the funds for his own use and benefit. In addition, Scher failed to respond to an NASD request for information.

Dennis M. Tuite (Registered Representative, Charlotte, North Carolina) was fined $65,000, barred from association with any NASD member in any capacity, and required to pay $8,829.19 in restitution to his member firm. The sanctions were based on findings that Tuite transferred into his personal securities account three securities positions from his parents' account without their knowledge or consent by falsifying two letters of authorization. Tuite also liquidated two of the three aforementioned securities positions and withdrew the proceeds totaling $8,829.19. In addition, Tuite failed to respond to an NASD request for information.

December Actions

Jeffrey D. Berkoff (Registered Representative, Tequesta, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $7,500, suspended from association with any NASD member in any capacity for five business days, and required to disgorge to public customers his net commissions on the unsuitable trades totaling $6,545. Without admitting or denying the allegations, Berkoff consented to the described sanctions and to the entry of findings that he made recommendations to public customers that involved the purchase of certain securities on margin. These transactions were excessive and unsuitable for the customers' upon the basis of the facts they disclosed as to their tax status, investment objectives, and financial situations.

Joel Eugene Shaw (Registered Representative, Greenville, South Carolina) was fined $10,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a November 1993 NBCC decision. The sanctions were based on findings that Shaw solicited and accepted two checks that totaled $21,142.67 for a mutual fund investment. Instead, Shaw deposited the checks in his personal bank account and applied the proceeds to his own use and benefit. When the customer questioned Shaw as to why she never received statements, Shaw provided the customer with falsified statements reflecting her purported mutual fund shares.

January Actions

R. B. Webster Investments, Inc. (Lauderhill, Florida) and **Robert Bruce Orkin (Registered Principal, Coconut Creek, Florida)** were fined $200,000, jointly and severally, and ordered to pay $53,784 in restitution to customers. R. B. Webster was also expelled from NASD membership and Orkin was barred from association with any NASD member in any capacity. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a July 1993 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Orkin, effected principal transactions with public customers at unfair prices in two securities.

The SEC affirmed NASD findings that R. B. Webster and Orkin had charged markups ranging from 10 to 138 percent for one security and from 10 to 84 percent for another, in violation of the NASD Mark-Up Policy. The NASD found that the firm abused its dominant position in the market to set arbitrary prices and to execute sales to the public at arbitrarily high prices. In addition, the firm and Orkin used their domination and control of the market to manipulate the prices of such securities.

District 8—Illinois, Indiana, Michigan, part of upstate New York (the counties of Livingston, Monroe, and Steuben, and the remainder of the state west of such counties), Ohio, and Wisconsin

November Actions

James Hector Alvarado (Registered Representative, Deerfield, Illinois) submitted an Offer of Settlement pursuant to which he was fined $15,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Alvarado consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give written notice and obtain prior written authorization from his member firm to engage in such activities. The findings also stated that Alvarado provided to a public customer unapproved sales material that contained misleading and inaccurate information.

James S. Crousore, Sr. (Registered Representative, Indianapolis, Indiana) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Crousore consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Dennis Michael Hayes (Registered Representative, West Bloomfield, Michigan) submitted an Offer of Settlement pursuant to which he was fined $10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Hayes consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to, or receive prior written authorization from, his member firm to engage in such activities.

Douglas E. Holmes (Registered Representative, Port Clinton, Ohio) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Holmes failed to respond to NASD requests for information concerning his termination from a member firm.

Ronald L. LaMell (Associated Person, Highland Park, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $120,000, barred from association with any NASD member in any capacity, and required to pay $182,166 in restitution to a member firm. Without admitting or denying the allegations, LaMell consented to the described sanctions and to the entry of findings that he obtained checks totaling $182,166 from his member firm payable to public customers from withdrawals of dividends from the customers' insurance policies or loans against their policies. According to the findings, LaMell failed to forward the checks to the customers and used the funds for some purpose other than for the benefit of the customers. The findings also stated that LaMell failed to respond to NASD requests for information.

Harish C. Puri (Registered Principal, Rockford, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Puri consented to the described sanctions and to the entry of findings that he participated in private securities transactions while failing to give prior written notice to his member firm of his intention to engage in such activities.

Eric Woo Kim (Registered Representative, Glencoe, Illinois) was fined $12,500. The sanction was based on findings that Kim engaged in private securities transactions and failed to give his member firm prior written notice of his intention, and to receive from the firm prior written permission, to engage in such activities.

Republic Securities, Inc. (Chicago, Illinois) and **Kevin Kowalski (Registered Principal, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $25,000, jointly and severally. The firm was also required to pay $18,846.16 in restitution to customers. In addition, the firm will retain an independent law firm that will review the firm's third-market operations and procedures for compliance with the NASD rules and regulations and submit a report of such review to the Chicago District Office. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kowalski, engaged in 87 principal transactions with customers at unfair and unreasonable prices taking into consideration all relevant factors. The findings also stated that the firm, acting through Kowalski, paid $326,551 in commissions to a non-registered, non-member broker/dealer.

December Actions

None

January Actions

Diah W. Anderson (Registered Representative, Lakewood, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $6,750, barred from association with any NASD member in any capacity, and required to pay restitution to her member firm. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that she misappropriated $1,349.50 from two insurance customers.

Harold E. Butcher (Registered Representative, Bloomington, Indiana) submitted an Offer of Settlement pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Butcher consented to the described sanctions and to the entry of findings that he received from a public customer a $1,005 check with instructions to use such funds to purchase a medical insurance policy. According to the findings, Butcher deposited the funds in an account he controlled or had an interest in, and retained a portion of the funds for his own use and benefit. The findings also stated that Butcher failed to respond to NASD requests for information.

Salvatore John Cannatella (Registered Representative, Williamsville, New York) was fined $30,000 and suspended from association with any NASD member in any capacity for 45 days. The NBCC modified the sanctions following appeal of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Cannatella operated as a registered person without proper registration with the NASD, and was associated with a member firm when he was statutorily disqualified. In addition, Cannatella improperly received commission-related compensation while he was not registered and failed to respond fully and timely to NASD requests for information. This action has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

David E. Freitag (Registered Representative, Cary, Illinois) submitted an Offer of Settlement pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Freitag consented to the described sanctions and to the entry of findings that he withdrew $103,745.97 from a public customer's annuity without the customer's knowledge or consent and deposited the funds in accounts of other customers, some of which were related to him, thereby earning $5,492.03 in commissions.

Patricia Suzanne Gale (Registered Principal, Gaylord, Michigan) and **Ralph Dale Meredith (Registered Principal, Port Huron, Michigan). Gale** was fined $50,000 and barred from association with any NASD member in any capacity. Meredith was fined $50,000 and barred from association with any NASD member in any principal or supervisory capacity. The sanctions were based on findings that Gale participated in private securities transactions while failing to notify her member firm in writing and to obtain written approval from her member firm to engage in such activities. In addition, Gale induced public customers to purchase stock by means of deceptive or fraudulent devices or contrivances and made unsuitable recommendations to customers.

Furthermore, in connection with the offering and sale of limited partnership interests, Gale and Meredith failed to return investors' funds when the terms of the contingency were not met, in violation of SEC Rule 10b-9. Moreover, Meredith failed to enforce written supervisory procedures properly or to otherwise supervise the activities of Gale concerning her unsuitable recommendations.

Joseph F. Gennocro (Registered Representative, Cheektowaga, New York) submitted an Offer of Settlement pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gennocro consented to the described sanctions and to the entry of findings that he misappropriated from 30 insurance customers $3,813.01 designated for the payment of insurance premiums.

Ronald W. Gibbs (Registered Representative, Chicago, Illinois) was fined $50,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Gibbs participated in 37 private securities transactions while failing to give his member firm prior written notice of his intention to engage in such activities.

This action has been appealed to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Kenneth A. Horwitz (Registered Representative, Auburn, Indiana) submitted an Offer of Settlement pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Horwitz consented to the described sanctions and to the entry of findings that he requested from his member firm a $1,000 cash advance on behalf of a registered representative without the individual's knowledge or consent. The NASD determined that Horwitz deposited the funds or caused them to be deposited in an account in which he had a beneficial interest, and used the funds for some purpose other than to benefit the registered representative. The findings also stated that Horwitz failed to respond to NASD requests for information.

Keith M. Mason (Registered Representative, Detroit, Michigan) was fined $35,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mason obtained a $3,000 cashier's check from a public customer with instructions to use the funds as an investment in an annuity account. Mason failed to follow said instructions, deposited the funds in an account in which he had a beneficial interest, and used the funds for some purpose other than for the benefit of the customer. The findings also stated that Mason failed to respond to NASD requests for information.

Christopher D. McFarland (Registered Representative, Burnham, Illinois) submitted an Offer of Settlement pursuant to which he was fined $2,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, McFarland consented to the described sanctions and to the entry of findings that, on two occasions, he signed and submitted to the NASD a Form U-4 that failed to disclose that he pled guilty to two counts of misdemeanor retail theft in 1984.

Mark R. Mellinger (Registered Representative, Manitowac, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mellinger consented to the described sanctions and to the entry of findings that he obtained a $5,000 check made payable to a public customer as a partial surrender for a single premium retirement annuity for the customer. According to the findings, Mellinger was instructed by the customer to use the funds to pay the remainder owed on a $22,000 whole life policy for the customer, but failed to follow said instructions. Instead, the NASD found that Mellinger deposited the check in an account in which he had a beneficial interest without the customer's knowledge or consent, used only $578.08 as instructed, and used $4,421.92 for some purpose other than to benefit the customer.

Krishna Prasad (Registered Representative, Farmington Hills, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $60,000, barred from association with any NASD member in any capacity, and required to pay $11,731.16 in restitution to a member firm. Without admitting or denying the allegations, Prasad consented to the described sanctions and to the entry of findings that he signed, or caused to be signed, customers' names on policy owners' service request forms without the customers' knowledge and consent, resulting in funds being issued from these policies totaling $11,731.16. In connection with this activity, the findings stated that Prasad obtained the funds and used it for some purpose other than for the benefit of the customers.

Todd M. Riley (Registered Representative, Weidman, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Riley consented to the described sanctions and to the entry of findings that he received from public customers funds totaling $751 with instructions to use the funds to purchase insurance policies. The NASD determined that Riley used the funds for some purpose other than for the benefit of the customers.

District 9—Delaware, District of Columbia, Maryland, southern New Jersey (the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem), Pennsylvania, Virginia, and West Virginia

November Actions

Larry W. Albin (Registered Representative, Lancaster, Pennsylvania) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Albin failed to respond to NASD requests for information concerning his financial dealings with an individual.

Paul A. DeCarlo (Associated Person, Brooklyn, New York) was fined $10,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanction following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that DeCarlo arranged, recruited, and conspired to have an impostor take the Series 7 examination for him.

Charles C. Florence, Jr. (Registered Representative, Morgantown, West Virginia) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Florence failed to respond to NASD requests for information concerning matters disclosed in a Notice of Termination (Form U-5) filed for him by a member firm.

George Gable, Jr. (Registered Representative, Uniontown, Pennsylvania) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gable received from public customers two checks totaling $1,000 intended for payment of an insurance premium. Gable caused the checks to be deposited with his member firm and applied the funds to pay premiums on a policy other than those of the customers.

Phil Hargrave (Associated Person, Baltimore, Maryland) was fined $20,000 and barred from association with any NASD member in any capacity. Hargrave forged or caused to be forged the endorsement signatures of insurance customers on two policy surrender checks totaling $1,281.48, negotiated both checks, and converted the proceeds for his personal use and benefit.

G. Drew Hayes, Jr. (Registered Representative, Wenonah, New Jersey) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hayes failed to respond to NASD requests for information by not appearing at the NASD and providing testimony.

Henry C. Johnson (Registered Representative, Washington, D.C.) submitted an Offer of Settlement pursuant to which he was fined $65,000, barred from association with any NASD member in any capacity, and required to pay restitution to all aggrieved parties. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that he forged the endorsement signatures of two public customers on nine insurance premium refund checks totaling $1,673.34, and negotiated and converted the proceeds for his own use and benefit. The findings also stated that Johnson forged a different customer's signature on a document requesting the surrender of an insurance policy and a change of his address. The NASD further found that Johnson forged the customer's signature on a $5,276.69 surrender check, endorsed it to his wife's name, and converted the proceeds for his own use and benefit. In addition, the NASD determined that Johnson failed to respond to NASD requests for information.

Geoffrey R. Nevel (Registered Representative, South Williamsport, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nevel consented to the described sanctions and to the entry of findings that he completed and submitted to his member firm three applications for reinstatement and six disbursement request forms relating to three separate insurance policies owned by a customer to prevent the policies from lapsing. According to the findings, Nevel completed and submitted the documents without the knowledge or authorization of the policy owner and forged the customer's signature on each application and disbursement form.

The NASD determined that Nevel separately requested a loan against each of the three policies without the knowledge or consent of the policy owner. Pursuant thereto, the NASD found that three checks totaling $3,884.71 were issued payable to the policy holder. The findings stated that Nevel obtained the checks, forged the customer's endorsement on each check, signed each check, and negotiated and obtained the funds that he used at his discretion.

Charles W. Rainwater (Registered Representative, Springfield, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Rainwater prepared and submitted to his member firm a letter purportedly from a public customer regarding the customer's purchases of stock and forged the customer's signature on the letter. Furthermore, Rainwater executed unauthorized transactions in the accounts of public customers. In addition, Rainwater recommended to and effected for the accounts of public customers the purchase of securities without having reasonable grounds to believe such purchases were suitable for the customers in light of their investment inexperience, and financial needs and objectives.

Helene R. Schwartz (Registered Representative, Maple Shade, New Jersey) was suspended from association with any NASD member in any capacity for 30 days (suspension deemed served). The SEC imposed the sanction following appeal of a November 1993 NBCC decision. The sanction was based on findings that Schwartz had unauthorized material in her possession while taking the Series 6 examination.

December Actions

None

January Actions

Paul David Pack (Registered Representative, Philadelphia, Pennsylvania) was fined $5,000 and suspended from association with any NASD member in any capacity commencing November 9, 1993 and concluding September 13, 1994. The SEC imposed the sanctions following appeal of a May 1994 NBCC decision. The sanctions were based on findings that Pack obtained a year-to-date production statement that reflected commissions of $196,385.43 earned by one of his colleagues and affixed his own name to the statement. At that time, his own year-to-date production had been $75,748.99. When Pack sought employment with another firm, he submitted the altered production statement to the firm and falsely represented it as his own.

Patricia H. Smith (Registered Representative, Hanover, Pennsylvania) was fined $7,500, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination before again becoming registered in any capacity. The NBCC affirmed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that, on four occasions, Smith submitted to her member firms applications for the purchase of securities with her name listed on the application as the soliciting representative, when these transactions had actually been solicited by other unregistered individuals. Smith has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

District 10—the five boroughs of New York City and the adjacent counties in New York (the counties of Nassau, Orange, Putnam, Rockland, Suffolk, Westchester) and northern New Jersey (the state of New Jersey, except for the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem)

November Actions

Felix Bakhman (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $5,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bakhman consented to the described sanctions and to the entry of findings that he was discovered at the New York Public Library to be in possession of and copying stolen microfiche.

Christopher Chruma (Associated Person, Melville, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000, barred from association with any NASD member in any capacity, ordered to disgorge ill-gotten gains of $7,200, and ordered to fully cooperate with the NASD. Specifically, Chruma must provide information, answer questions, and offer testimony, if needed, in connection with the NASD investigation. Without admitting or denying the allegations, Chruma consented to the described sanctions and to the entry of findings that for $7,200 he sold to a representative of another member firm numerous microfiche records containing customer account statements that he removed from the offices of his member firm.

Steven Mark Cohen (Registered Representative, Roslyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that he recommended and executed unsuitable securities transactions in the accounts of public customers.

Kevin Galati (Registered Representative, Parsippany, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Galati consented to the described sanctions and to the entry of findings that he entered the premises of his former member firm and removed about 6,000 bond maturity cards, all without permission from any person at the firm.

Robert Daniel Idzi, Jr. (Registered Representative, Alexandria, Virginia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Idzi consented to the described sanctions and to the entry of findings that he appeared at various NASD Proctor Certification Testing Centers and impersonated five candidates for the purpose of taking qualification examinations. According to the findings, Idzi produced several fraudulent identifications and received payment for his services.

Gregory James Peitz (Registered Representative, Brooklyn, New York) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Peitz executed two unauthorized transactions in the account of a public customer and failed to appear for an on-the-record interview.

Charles B. Wakely (Registered Representative, Alpharetta, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000, barred from association with any NASD member in any capacity, and required to pay $45,000 in restitution to public customers. Without admitting or denying the allegations, Wakely consented to the described sanctions and to the entry of findings that he misappropriated $45,000 from various customer accounts.

Kwok Cheung Yung (Associated Person, New York, New York) submitted an Offer of Settlement pursuant to which he was fined $2,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Yung consented to the described sanctions and to the entry of findings that he functioned in the capacity of a general securities representative without the benefit of registration with the NASD.

December Actions

None

January Actions

Allan Belmonte Beraquit (Registered Representative, Edison, New Jersey) was fined $25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, in connection with an investment recommendation to two public customers, Beraquit made misrepresentations to the customers, guaranteed the investment, failed to honor the guarantee, and converted $1,000 to his own benefit. In addition, Beraquit failed to respond to NASD requests for information.

Vincent Whittfield Brown, Sr. (Registered Representative, Brooklyn, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brown failed to respond to NASD requests for information concerning a customer complaint.

James W. Bullard, Jr., Inc. (New York, New York) and **Mark Israel Meskin (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally. In addition, Meskin was required to requalify by examination as a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Meskin, conducted a securities business while failing to maintain its required minimum net capital.

Paula Ann Davies-Palmieri (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which she was fined $25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Davies-Palmieri consented to the described sanctions and to the entry of findings that she disclosed proprietary, non-public information to a client of her member firm for the express purpose of assisting the client tender a successful bid for certain bonds, thereby unfairly increasing the client's ability to purchase these bonds. In addition, the NASD found that Davies-Palmieri failed to respond to NASD requests for information.

Keith L. DeSanto (Registered Representative, New York, New York) was fined $15,000, suspended from association with any NASD member in any capacity for five days, and required to requalify by examination in all capacities. If DeSanto does not requalify within 60 days, he will be suspended until requalification occurs. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that DeSanto caused securities transactions to be effected in the accounts of two public customers without their knowledge, authorization, or consent. This case has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal.

Jose M. Gutierrez (Registered Representative, Avenel, New Jersey) submitted an Offer of Settlement pursuant to which he was fined $17,775, barred from association with any NASD member in any capacity, and required to pay $1,555 in restitution to his member firm. Without admitting or denying the allegations, Gutierrez consented to the described sanctions and to the entry of findings that he obtained from a public customer a $1,555 check to be credited to the customer's account. The NASD found that, without the customer's knowledge or consent, Gutierrez endorsed the check and deposited it to his account for his own use and benefit. In addition, the NASD found that Gutierrez failed to respond to NASD requests for information.

Mary Martha Martin (Registered Principal, Long Beach, New York) and **Michael Peter Galterio (Registered Principal, Wantagh, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which Martin was fined $2,500, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by examination as a general securities principal. Galterio was fined $2,500 and suspended from acting in a supervisory capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that a member firm, acting through Martin, failed to comply with SEC Rule 15c2-6 in that they sold shares of designated securities to non-established and non-accredited public customers, in contravention of the Rule's strict compliance requirements.

The NASD also found that the firm, acting through Martin, distributed to public customers sales literature that was misleading, unwarranted, contained promissory statements, and failed to adhere to the specific standards regarding recommendations. In addition, the findings stated that the firm, acting through Galterio, failed to supervise the activities of Martin as to her compliance with SEC Rule 15c2-6.

Craig Medoff (Registered Representative, New York, New York) was fined $120,000 and barred from associa-

tion with any NASD member in any capacity. The sanctions were based on findings that Medoff made misrepresentations and omissions of material facts to induce public customers to purchase a large position in a corporation. In addition, Medoff guaranteed the same customers' investments and forged one of their signatures on a letter of authorization providing for the transfer of shares from a customer's account to unrelated accounts without the customers knowledge or consent. Furthermore, Medoff failed to respond to NASD requests for information.

Frank Nicholas Pellegrino (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pellegrino consented to the described sanction and to the entry of findings that he hired an individual to impersonate him at two PROCTOR® Certification Testing Centers to take qualifications examinations for him.

Steven Arnold Seffren (Registered Representative, New York, New York) was fined $80,000, barred from association with any NASD member in any capacity, and required to pay $53,352 in restitution. The sanctions were based on findings that Seffren made recommendations to a public customer without having a reasonable basis to believe that the recommendation was consistent with the customer's stated investment objectives or suitable based on her financial needs. Furthermore, Seffren prepared a letter to his clearing firm and signed the same customer's name to the letter authorizing the withdrawal of $20,000 from the customer's account without her prior authorization or consent.

Also, Seffren changed certain information on transfer papers executed by the same customer without the customer's authorization, thereby transferring her account to a different firm than was indicated by Seffren. Thereafter, Seffren purchased shares of a common stock in the customer's account without her prior authorization, knowledge, or consent. Seffren also participated in private securities transactions for compensation without providing written notice to his member firm, and failed to respond to NASD requests for information.

Ronald Peter St. Cyr (Registered Representative, Brooklyn, New York) was fined $27,500 and barred from association with any NASD member in any capacity. However, the fine may be offset against any amount he pays in restitution to public customers or his member firm. The sanctions were based on findings that St. Cyr received from public customers endorsed policy loan checks totaling $2,026.26 for insurance payments and other investments and, instead, cashed the checks and used the funds for his own personal use. Furthermore, St. Cyr forged the endorsement of another customer on a loan request form and on a $878.01 check for an unauthorized loan and used the funds for his own personal use. In addition, St. Cyr failed to respond to NASD requests for information.

Joseph Eugene Torres, Jr. (Registered Representative, Deer Park, New York) was fined $75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Torres caused shares of common stock to be purchased in the accounts of public customers without the knowledge or consent of the customers. Furthermore, Torres made various misrepresentations to public customers concerning purchase and sale transactions in the customers' accounts. Thereafter, in an attempt to conceal these misrepresentations to one customer, Torres altered, or caused to be altered, a confirmation slip reflecting an inaccurate sale price. In addition, Torres failed to honor a $31,627.50 joint and several NASD arbitration award and failed to respond to NASD requests for information.

District 11—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester; the counties of Livingston, Monroe, and Steuben; the remainder of the state west of such counties; and the five boroughs of New York City)

November Actions

Kenneth B. Albert (Registered Representative, Greenfield, Massachusetts) was fined $50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Albert misappropriated insurance customer funds totaling $25,918.78 without their knowledge or consent. In addition, Albert failed to respond to NASD requests for information.

Bartholomeus T. deBont (Registered Representative, Wakefield, Rhode Island) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, deBont consented to the described sanctions and to the entry of findings that, without authorization, he obtained a $2,200 insurance policy withdrawal check intended for an insurance customer and converted the proceeds to his own use and benefit.

Michael P. Donnelly (Registered Representative, Rocky Hill, Connecticut) was fined $5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Donnelly received from a public customer a $2,000 check for investment purposes. Instead, Donnelly endorsed and deposited the check into his own account and withheld and misappropriated the proceeds to his own use and benefit without the knowledge or consent of the customer.

John F. Nazer (Registered Representative, Keene, New Hampshire) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nazer consented to the described sanctions and to the entry of findings that he misused insurance customer funds totaling $10,000.

Frank J. Pezzello (Registered Representative, New Windsor, New York) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pezzello withheld and misappropriated from a public customer a $5,000 check intended for investment in a mutual fund.

Loren D. Sirko (Registered Representative, Lagrangeville, New York) was fined $75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sirko caused the misappropriation of customer funds totaling $62,528.90 without the knowledge or consent of his member firm or customers by causing the issuance of checks, double endorsing the checks, and converting the funds for his own use. In addition, Sirko failed to respond to NASD requests for information.

Sidney J. Spiegel (Registered Representative, Randolph, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Spiegel consented to the described sanctions and to the entry of findings that he received from a public customer $4,989.11 intended for an insurance premium payment and without the customer's knowledge or consent misappropriated the funds for his own use and benefit.

Anthony V. Tata (Registered Representative, North Haven, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tata consented to the described sanctions and to the entry of findings that he withheld and misappropriated $3,800 representing funds of at least seven insurance policyholders.

December Actions

Jean Anthony Carrieri (Registered Representative, East Haven, Connecticut) submitted an Offer of Settlement pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carrieri consented to the described sanctions and to the entry of findings that he withheld and misappropriated to his own use and benefit insurance customer funds totaling $1,481.80 without the knowledge or consent of the customers.

January Actions

Cantella & Co., Inc. (Boston, Massachusetts) and **Vincent M. Cantella (Registered Principal, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined $15,000, jointly and severally, and agreed to implement certain improvements in the firm's supervisory, compliance, and management structure. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Cantella, failed accurately to compute its reserve requirement, which resulted in a deficiency in its reserve account.

In addition, the NASD determined that the firm, acting through Cantella, failed to comply with the requirements of Regulation T of the Federal Reserve Board in that transactions in customer accounts were not fully paid for within the prescribed time period. Transactions were also effected in frozen customer accounts, in violation of Regulation T, wherein there were no funds in the accounts before execution. The NASD also found that the firm, acting through Cantella, allowed an associated person of the firm continually to perform functions that required registration as either a general securities representative or limited representative pursuant to NASD By-Laws.

Stephen L. Cross (Registered Representative, Marietta, Georgia) was fined $20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cross withheld and misappropriated for his own use and benefit customer funds totaling $110,000 intended for investment in a money market and a mutual fund.

Robert P. Dolan (Registered Representative, Bridgewater, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dolan consented to the described sanctions and to the entry of findings that he received four insurance disbursement checks on lapsed policies, cashed the checks, paid an initial premium on a new policy for each of the customers, and misappropriated the remaining funds totaling $1,523.

Rafael A. Fernandez (Registered Representative, Windsor, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fernandez consented to the described sanctions and to the entry of findings that he received from an insurance customer $1,500 intended for an insurance premium payment, applied $651.36 to the policy, and misused the remaining $848.64 without the customer's knowledge or consent.

Brian D. Griffiths (Registered Representative, Centerville, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Griffiths consented to the described sanctions and to the entry of findings that he received from a public customer $10,000 intended for mutual fund investment, and without the customer's knowledge or consent converted the proceeds to his own use and benefit.

David M. Lalima (Registered Representative, Tampa, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lalima consented to the described sanctions and to the entry of findings that he caused a $41,000 check to be issued from the account of a public customer and converted the proceeds to his own use and benefit without the customer's authorization.

Stephen V. Lamoreaux (Registered Representative, New Fairfield, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lamoreaux consented to the described sanctions and to the entry of findings that, with-

out authorization, he diverted public customer funds totaling $118,950 to his control and benefit. The NASD found that Lamoreaux engaged in this activity through the alteration of five checks and forgery of a letter of authorization, and thereafter converted the funds to his own use without the knowledge or consent of the customer.

Cynthia B. Maglio (Associated Person, New Britain, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined $20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Maglio consented to the described sanctions and to the entry of findings that she received from insurance customers $4,631.69 intended for insurance premium payments, and without the knowledge or consent of the customers misappropriated the funds for her own use and benefit.

Richard D. North (Registered Representative, Duxbury, Massachusetts) was fined $2,000,000 and barred from association with any NASD member in any capacity. However, the fine may be reduced to $200,000 upon demonstration that he has paid $1,862,299 in restitution to public customers. The sanctions were based on findings that, on behalf of at least six clients, North had under his control and management various assets in the form of cash and securities totaling about $1,862.299 that he converted to his own personal use and benefit. Furthermore, North prepared and sent to the aforementioned clients statements reflecting various investments and portfolio values all of which were false and misleading. In addition, North failed to respond to NASD requests for information.

Steven P. Palladino (Registered Representative, Westwood, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Palladino consented to the described sanctions and to the entry of findings that he withheld and misappropriated for his own use and benefit insurance customer funds totaling $40,361.

David C. White (Registered Representative, Framingham, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he received from an insurance customer $1,469 intended for payment of a homeowners' insurance policy premium and without the customer's knowledge or consent, converted the funds for his own use and benefit.

James Woo Fong (Registered Representative, Newton Centre, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined $20,000 and required to requalify by examination as a registered representative. Without admitting or denying the allegations, Fong consented to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the regular course or scope of his association with his member firm without providing prior written notice to the firm.

Market Surveillance Committee

November Actions

Michael J. Markowski (Registered Principal, Miami Beach, Florida) was fined $50,000, barred from association with any NASD member in a principal capacity, barred from maintaining a debt or equity interest in any member firm, and suspended from association with any NASD member in any capacity for two years. The United States Court of Appeals for the Second Circuit denied Markowski's petition for review and affirmed the sanctions imposed in an SEC decision. The sanctions were based on findings that Markowski failed to respond to repeated written and oral requests for information made by the NASD concerning access to his member firm's books and records. Markowski also failed to update his registration to reflect his current address.

December Actions

Adams Securities, Inc. (Las Vegas, Nevada), James William Adams (Registered Principal, Henderson, Nevada), and **Daniel Bruce Perry (Registered Principal, Henderson, Nevada)**.The firm and Adams were fined $450,000, jointly and severally, however, the fine will be reduced by any amount paid to customers. Furthermore, Adams was fined an additional $25,000 and suspended from association with any NASD member in any capacity for two years. Perry was also fined $25,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by examination. The Securities and Exchange Commission (SEC) imposed the sanctions following appeal of a December 1991 National Business Conduct Committee (NBCC) decision.

The sanctions were based on findings that, in contravention of the NASD Mark-Up Policy, the firm, acting through Adams and Perry, sold securities to its retail customers in principal transactions at unfair prices. The markups on these transactions were excessive and fraudulent and ranged from 11 to 133 percent above the prevailing market price. In addition, the firm and Adams failed to establish, maintain, and enforce adequate supervisory procedures regarding markups.

January Actions

Harold B. Hayes (Registered Representative, Pleasant Hill, California) was fined $300,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following the appeal of an April 1993 NBCC decision. The sanctions were based on findings that Hayes entered into a payment arrangement with the issuer of common stock whereby he purchased the stock offering with the proceeds from subsequent sales, in violation of SEC Rule 10b-5. Hayes then effected a series of transactions in the common stock that created actual and apparent trading activity to induce the purchase or sale of the stock by others. However, Hayes failed to disclose to his customers the special payment arrangement, that he was paying for the stock with the proceeds of its sales at higher prices to the customers, or that his self-interest could influence recommendations to his customers. As a result of this fraudulent activity, Hayes realized profits of $277.564.

As a creditor and a customer, Hayes arranged for the extension of credit to himself in his payment arrangement with the issuer of the common stock, in violation of Regulation T, and, as a borrower who caused an extension of credit, violated Regulation T, thereby violating Regulation X of the Federal Reserve Board. In furtherance of the manipulative scheme, Hayes solicited customers and recommended purchases of the aforementioned stock by making misrepresentations and omitting material facts. Furthermore, in his plan to manipulate the stock, Hayes was an undisclosed underwriter in the securities' distribution in that he purchased the stock from the issuer for the purpose of distributing them.

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